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BEFORE THE ARIZONA CORPORATION (

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4 IN THE MATTER OF THE APPLICATION)

OF UNS Electric, INC., IN)

5 CONFORMANCE WITH THE REQUIREMENTS)

OF ARIZONA REVISED STATUTES)

6 40-360, et seq, FOR A)

) DOCKET NO.

CERTIFICATE OF ENVIRONMENTAL)

) L-00000F-09-0190-00144

7 COMPATIBILITY AUTHORIZING THE)

CONSTRUCTION OF THE VAIL TO)

) CASE NO. 144

8 VALENCIA 115kV TO 138kV)

TRANSMISSION LINE UPGRADE)

9 PROJECT, ORIGINATING AT THE)

EXISTING VAIL SUBSTATION IN SEC.)

10 4, T.16S., R.15E., PIMA COUNTY,)

TO THE EXISTING VALENCIA)

11 SUBSTATION IN SEC. 5, T.24S.,)

) PUBLIC COMMENTS

R.14E., IN THE CITY OF NOGALES,)

) ORAL ARGUMENTS

12 SANTA CRUZ COUNTY, ARIZONA.)

) SPECIAL OPEN MEETING

13

At: Tucson, Arizona

14

Date: September 15, 2009

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Arizona Corporation Commission

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By: TERESE HEISIG

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Certificate No. 50378

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1 MORNING PUBLIC COMMENT SESSION

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ORAL ARGUMENTS

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 235 of
4 said Commission, 400 West Congress Street, Tucson,
5 Arizona, at 10:00 a.m. before TERESE HEISIG, Certified
6 Reporter No. 50378 for the State of Arizona.

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8
9 BEFORE: KRISTIN K. MAYES, Chairman
10 GARY PIERCE, Commissioner
11 PAUL NEWMAN, Commission
12 SANDRA KENNEDY, Commissioner
13 BOB STUMP, Commissioner

14 APPEARANCES:

15 For the Applicant:

16 ROSHKA, DeWULF & PATTEN
17 By Messrs. Matthew Derstine and Jason D. Gellman
18 One Arizona Center
19 400 East Van Buren Street, Suite 800
20 Phoenix, Arizona 85004

21 and

22 UNISOURCE ENERGY SERVICE
23 By: Mr. Marc Jerden, Senior Legal Counsel
24 One South Church Avenue, Suite 200
25 Tucson, Arizona 85702

26 For Arizona Corporation Commission:

27 ARIZONA CORPORATION COMMISSION
28 Legal Division
29 By: Ms. Janet F. Wagner
30 By: Mr. Charles H. Hains
31 1200 West Washington Street
32 Phoenix, Arizona 85007

1 APPEARANCES:

2

For Marshall Magruder:

3

In Propria Persona
P.O. Box 1267
Tubac, Arizona 85646

5

6 For Elizabeth Buchroeder Webb:

7

In Propria Persona
17451 East Hilston Ranch Road
Vail, Arizona 85641

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TERESE M. HEISIG
Certified Reporter
Certificate No. 50378

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1 CHMN. MAYES: All right. Let's go ahead and go
2 on the record and get started. This is the open meeting
3 of the Arizona Corporation Commission in the matter of
4 the Application of UNS Electric for a CEC for
5 construction of the Vail to Valencia 115kV to 138kV
6 transmission line upgrade project originating at the
7 existing Vail substation in Section 4, T.16S, R.15E Pima
8 County to the existing Valencia substation in the City
9 of Nogales, Pima County, Arizona.

10 What we wanted to do is go ahead and take public
11 comment in this case first, and then we will go straight
12 into the oral arguments by the parties and intervenors.
13 The Commission is in receipt of the interveners' briefs,
14 and we have read them, and we will take the case that
15 way.

16 Why don't we start with public comment, unless
17 my colleagues would like to make any opening statements?
18 But seeing none, Jim Webb, would like to go first?

19 MR. WEBB: I have to apologize if I stutter. I
20 stutter when I read. It makes it more interesting, I
21 guess.

22 Dear Chairman Mayes and Commissioners. Thank
23 you for holding this special open house hearing in
24 Tucson to hear public comments. I would also like to
25 thank the Committee for assuring the use of gray poles

1 next to the existing steel structures on the northern
2 end of the project.

3 My name is James Webb, and I am a TEP customer
4 on three accounts. I am also a taxpayer, and I help
5 subsidize my wife's community service. It is ridiculous
6 for me to have to spend even more money every time my
7 wife is involved in a TEP/UNS Electric case because the
8 companies refuses to engage in long-term planning with
9 residents who will be affected by these projects, and
10 also because the companies do not provide complete and
11 timely information when they answer data requests. As
12 the manufacturing and presenting engineer for a local
13 aerospace company, I find it unacceptable to see the end
14 user, the customer, is not given complete information.

15 As a rate payer, I am concerned, because UNS
16 Electric has made no mention prior to the hearings of
17 the costs to TEP. TEP is planning to pay for the
18 majority of a very large transformer connected with this
19 venture. While it may be a good value to the public,
20 the customers should have been notified so we could
21 provide informed comments on the project.

22 The same thing is starting over again with the
23 Rosemont Electric Project. There was no open house
24 meeting for Phase 2 in Vail/Corona de Tucson. Our
25 neighborhood was originally in the project study area,

1 and now it has been excluded even though we will suffer
2 a direct impacts from this project. The brief written
3 by UNS Electric mentions the project study area more
4 than once in regards with my wife. Does this mean the
5 comments from -- for the Rosemont Electric Project will
6 be treated different because we are not in the project
7 area?

8 Meaningful public input, not just chart looking,
9 will help us save on the costs associated with the Vail
10 to Valencia case in the future. A condition to form a
11 citizens advisory council is needed to assure we, the
12 customers, will be involved in future planning. And I
13 also have some additional ones from people in my
14 neighborhood who weren't able to make it today.

15 CHMN. MAYES: Great. Thanks, Mr. Webb, and we
16 will get copies for everybody. Great. Thank you.

17 COM. PIERCE: I ended up with two, Jim.

18 CHMN. MAYES: Thank you very much.

19 Charlotte Cook.

20 MS. Cook: Okay. First off, I want to thank
21 you for holding this open public meeting hearing for us.
22 My name is Charlotte Cook, and I live with my family at
23 the base of the Empire Mountains off of Old Sonoita
24 Highway. Due to the rural nature of where I have to
25 drive several hours -- or several miles to get to items

1 such as the grocery store, gas stations, and other
2 necessities, people living in the urban areas take three
3 items for granted. My vet for the horses and dogs would
4 be -- the closest vet for me would be in Sonoita. My
5 husband has a business in Douglas and commutes often
6 through Sonoita. My mother lives in Green Valley. So
7 when I read -- when I read the comments about Elizabeth
8 Webb, because she did not live in the project study
9 area, I could not believe that. There are not very many
10 people living in the project study area.

11 Within one mile of either side of the corridor
12 on the north end, most of it is either Arizona State
13 trust land owned by Pima County or Federal government
14 for the prison system. Rita Ranch is a much larger
15 community and has many more people in it and is located
16 only three miles to the north, and they are not involved
17 in this public outreach. It is also the -- it is also
18 in the City of Tucson, but is part of the Vail Unified
19 School District. Sonoita, Vail, Corona de Tucson, and
20 Rita Ranch all have the same school district. Other
21 high schools may be defined by neighborhood boundaries.
22 Ours are not.

23 I am worried about the project study area thing.
24 My neighborhood was right -- is right on the edge of the
25 old project study area for the Rosemont Electric

1 Project, but now it is further -- now it is further out
2 since TEP has reduced their project study area. Does
3 this mean my comments for the Rosemont Electric Project
4 are not worth as much? It sure sounds that way when I
5 read the briefs that the attorneys wrote. I have -- I
6 had to drive to Sahuarita for the only public house in
7 Phase 2 of the Rosemont project. It started right
8 during the feeding time and for my family dinner. I
9 suggested that the open houses in the rural communities
10 are not started at 5:30, especially when you have almost
11 an hour, or over an hour drive to get to them.

12 I also suggest that open houses are held using a
13 mixture of formats, instead of bunching -- or instead of
14 a bunch of charts. In Sahuarita, I felt like I did not
15 want to interrupt private conversations, but I did,
16 because I did not understand all of the charts by
17 myself. There was a video that was being played out in
18 the lobby, extremely hard to hear, as people were
19 walking in and out and moving chairs. I learned more at
20 a private meeting being held in Sonoita where there was
21 a brief talk given by Ed Beck than I did at the public
22 open house in Sahuarita. During that time -- during the
23 talk -- during and after the talk with Ed Beck, we were
24 able to listen to the other people making comments. I
25 asked questions and had them answered. We were able to

1 learn about the potential impacts, not just the
2 different route lines that were being used, but the
3 potential impacts of these lines and what would happen.
4 It was a much better involvement for the public. I
5 would not have known about this had I not been a part of
6 the group in Sonoita and been told and invited.

7 Regardless of how many open houses are held for
8 specific projects and regardless of how many open houses
9 might be conducted in a meaningful manner, in the
10 future, there will not -- let me see. In the future,
11 they will not include a very important part of the
12 public involvement, the transmission line -- of the
13 transmission line planning. These lines go through our
14 community. We are the customers. We are the ones who
15 pay for the lines, substations, and hearings. We should
16 have the right to be involved, and the companies have
17 made the major decisions.

18 With the large number of projects planned from
19 the Vail substation in the next 25 years, it only makes
20 sense to be adding a citizens advisory council to the
21 certificate, especially since TEP plans to pay several
22 million dollars of the transformer, and UNS Electric
23 might use it in the future for renewable energy
24 projects. It is a way for the Company to save money
25 when it goes into the public outreach in specific cases.

1 On a different note, I would like to thank -- I
2 would like to thank the Committee for making the
3 decision to add the gray poles in the locations of the
4 project. That would be -- let me see. I believe that
5 they have received a copy of the pole finishing plans at
6 the end of the routes. When I was driving to Marana the
7 other day, I really paid attention to this. It was
8 really obvious when you seen several different color
9 poles and you are talking about a beautiful rural area,
10 and it made a big difference to see the steel gray
11 poles. So thank you.

12 CHMN. MAYES: Thank you very much for coming and
13 providing that public comment, Ms. Cook.

14 Next, Sandy Whitehouse.

15 MS. COOK: I have hers. Hers is shorter, I
16 promise.

17 CHMN. MAYES: And this is -- for the record,
18 Ms. Cook is going to read comments made by Sandy
19 Whitehouse, who I think also provided an e-mail to the
20 record.

21 MS. COOK: I'm also turning somebody else's in
22 that couldn't make it. I'm not going to read it. I'm
23 just going to read Sandy Whitehouse's.

24 For Sandy Whitehouse. Thank you Chairman Mayes
25 and Members of the Committee. I will be in Colorado on

1 September 15th when the next committee meeting on the
2 matter of the line siting for the transmission lines
3 between the Valencia substation and the City of Nogales.
4 I am attending my a 50th class reunion with a dwindling
5 number of members of my class. Under the circumstances,
6 I would have delayed my trip, but these moments in a
7 person's life is rare and to be savored.

8 As president of the Santa Rita Foothills
9 community Association and Santa Rita Community
10 Association in Corona de Tucson, I'm concerned because
11 the proposed power lines will be marching across the
12 western border of our small community -- small village.
13 The lack of public outreach on the part of the utility
14 company is appalling. UNS Electric's cavalier attitude
15 toward our community means that the date -- means that
16 to date, there has been no public meetings in Corona de
17 Tucson. No one from Corona de Tucson has asked to
18 participate in the dis- -- no one was asked to
19 participate in the discussions as a stakeholder.
20 Additional flyers/notices were to be posted in the area
21 closest to the proposed sites, and with the meeting a
22 week hence, there are none. My husband, Bruce
23 Whitehouse, is the chief of the Corona de Tucson Fire
24 Department, the only governmental agency in the village,
25 and he has not received any notice of these meetings.

1 Corona de Tucson is a growing community with
2 roots sunk deep in our rural desert and a population
3 ready and willing to protect our beautiful landscape and
4 wildlife -- wilderness that surrounds us. We deserve a
5 role in the transmission line planning. We request the
6 appointment of an advisory council comprised of
7 community, neighborhood, and homeowners associations,
8 emergency responders, environmental groups and other
9 interested parties. Inclusion of the advisory council
10 should be added to the conditions and the granting of
11 any proposed Certificate of environmental Compatibility.
12 From Sandra Whitehouse. Thank you.

13 CHMN. MAYES: Thank you.

14 Commissioner Newman.

15 COM. NEWMAN: Thank you. I read a lot of the
16 letters, and a common theme seems to be one, set up a
17 community council, partly because the constituents feel
18 that they weren't all apprised of the situation, because
19 the studies has decreased and it didn't include enough
20 people in the area; is that right?

21 MS. COOK: Correct. I'm completely cut out of
22 it. That is an area I travel and do all the time, and
23 now I'm on the edge of it, and I'm cut out of the
24 project area. I live right in there off Old Sonoita
25 Highway. That is my travel route. I will be affected

1 by all of this. Corona de Tucson is totally affected by
2 all of this. There has not been any flyers posted. The
3 best way to get people to know what is going on is if we
4 have this advisory committee, so we could be notified
5 and kept abreast. We all have our jobs. We all have
6 other community activities that we are involved in, so
7 we don't know -- I don't go all the time just to check
8 out what happened with power lines.

9 COM. NEWMAN: Thank you very much.

10 MS. COOK: Thank you.

11 CHMN. MAYES: Thank you. JJ Lamb. And after
12 JJ, Kim Rego.

13 MS. COOK: Somebody else isn't going to be here.
14 Can I just give you their letters?

15 CHMN. MAYES: That is fine. For the record,
16 whose letter is this?

17 MS. COOK: Nancy Krawly. Thank you very much.

18 MR. LAMB: Dear Chairman Mayes and
19 Commissioners. Thank you for holding this special open
20 meeting in Tucson to hear comments.

21 CHMN. MAYES: JJ, is your light on? Can you
22 check it?

23 MR. LAMB: Much better. Dear Chairman Mayes and
24 Commissioners. Thank you for holding this special open
25 meeting in Tucson to hear comments. I would also like

1 to thank the Committee for putting the gray poles next
2 to existing steel structures on the northern end of the
3 project. It looks really great. My name is JJ Lamb,
4 and I'm the director of the Vail Preservation Society.
5 I am speaking today to give you some insight into our
6 historic preservation and community building
7 partnerships.

8 Nearly three years ago, Elizabeth Webb and I
9 began conversations with Cal Baker, another history
10 buff, about the buildings near Kolb Road and I-10
11 located in the Vail to Valencia project study area in
12 regard to the 2008 Pima County bond. The Esmond Station
13 area plan is mentioned in the application. We have been
14 working with Pima County, the City of Tucson, and the
15 Vail school district on the creation of the multi-use
16 park, civic center, trails system, and historic element
17 within the Esmond Station area plan; located near the
18 historic Esmond station rail stop. We have spoken with
19 the grazing lease holder on the state land, a Vail
20 pioneer whose family is active in the local preservation
21 issues and is attempting to find a way to preserve what
22 is left of the old Esmond station.

23 Two years ago, during a meeting to discuss
24 historic preservation with our District 4 supervisor Ray
25 Carroll, Rita Ranch, resident Mary ann Cleveland and

1 Elizabeth, and an owner of the historic property who for
2 privacy reasons needs to remain nameless, and I
3 discussed various projects in our region and how they
4 could fit into the overall plan. These buildings were
5 discussed then, as well, the ones at Esmond station and
6 I-10 and Kolb.

7 We believe one of these buildings was located at
8 Vail and served as the railroad foreman's home. We have
9 compelling photographic evidence that shows this as
10 early as 1915. If we are correct, one of our Vail
11 Pioneers lived in at as a boy during the 1940s.

12 More than a year ago, I spoke in front of the
13 line siting committee and asked to be added to the
14 Company stakeholder list for future projects. We were
15 not. It should have come as no surprise to TEP/UNS
16 Electric or its environmental planning group that the
17 Vail Preservation Society has identified boundaries west
18 to Wilmot Road within the direct vicinity of this
19 project. Our boundaries were identified over two years
20 ago during our strategic planning process. We have been
21 working diligently with other companies to create
22 community connections through local history.

23 I do not have any expectations about these
24 particular railroad building. I only point out that
25 they are within the project study area. It is also

1 important to note today's idea of community is very
2 different than it was previously. Objects and buildings
3 were moved in the interest -- in kind of an interesting
4 concept of recycling. Perceived boundaries were once
5 much more expansive as were the boundaries of our
6 founders' ranches, their empires. I am concerned about
7 the use of the word project study area in regard to
8 Elizabeth Webb in the brief written by UNS Electric. I
9 do live in the project study area for the Rosemont
10 Electric Project, and there was no open house in Vail or
11 Corona de Tucson for the important Phase 2 public
12 outreach. The Vail Preservation Society's boundaries
13 encompass almost all of the Rosemont Electric Project
14 study area. I am also concerned because on a personal
15 level, I have worked with Elizabeth on many projects
16 within the Vail school district boundaries. Some were
17 further away than the Vail substation. She and I were
18 two of the founding members of the Vail Preservation
19 Society, because of our shared love of the history of
20 our region. We have spent countless hours researching
21 ties to the Vail brothers and continue to work on saving
22 the very few remaining historic buildings in this area.
23 We have also invested many hours on public outreach.

24 We were co-directors, but Elizabeth has resigned
25 to avoid any possibility of a conflict of interest while

1 dealing with other community issues, such as these
2 electric cases. There is also a large time and
3 financial commitment required to be involved in them.
4 If there were upfront and transparent planning for the
5 future involving public citizens, it would help to
6 alleviate such losses. There is something -- this is
7 something that cannot be quantified, but it is a huge
8 loss to the preservation of family histories and our
9 preservation efforts in our area.

10 Strategic planning is an important component of
11 any organization. It makes good business sense for the
12 ACC to add a citizens advisory council to the
13 certificate. Thank you.

14 CHMN. MAYES: Thank you JJ. So just to clarify,
15 and I will certainly -- my colleagues will ask the
16 Company this question. It was the Vail Preservation
17 Society that asked to be made a part of the stakeholder
18 group?

19 MS. LAMB: Yes.

20 CHMN. MAYES: Or put on their e-mail list?

21 MS. LAMB: Yes.

22 CHMN. MAYES: And they did not?

23 MS. LAMB: No.

24 CHMN. MAYES: Did they respond to your, quote,
25 request at all?

1 MS. LAMB: Not to my recollection, no, and that
2 is something that I've kind of kept an eye out for.

3 CHMN. MAYES: And I will be expecting an answer
4 from the Company on this question, and I think the
5 intervenors and the public commenters have raised an
6 interesting issue for the Commission. You know,
7 irregardless of whether we adopt the idea of an advisory
8 committee, although I certainly think it should be
9 discussed and will be discussed, I know that in other
10 states, I believe in other -- some other states, there
11 is sort of a permanent stakeholder list that is notified
12 when transmission projects are proposed, and certainly,
13 that is something that would seem to be something we
14 should discuss here, so I appreciate your -- that
15 information.

16 MS. LAMB: Thank you. We would welcome that.

17 CHMN. MAYES: Kim Rego and then Bob Iannarino.

18 MS. LAMB: And I will read for Kim. Dear
19 Chairman Mayes and members of the Commission, thank you
20 for making the trip to Tucson for the special open
21 hearing for the Vail to Valencia case. Unfortunately,
22 due to my work schedule, I may not be able to attend. I
23 am reading for Kim Rego. And I and my family live in
24 the Empire Mountains. I'm a taxpayer, TEP ratepayer,
25 and registered voter in the state of Arizona. I am

1 writing today to request that you add the formation of
2 the citizens advisory council to the Certificate of
3 Environmental compatibility. I sent a packet of all the
4 public comments. In there is the same request and
5 letters representing hundreds of families in our diverse
6 community. It is the best -- in the best interest of
7 the public and the environment. Regardless of how good
8 public outreach is by any utility, the Committee still
9 considers each application on case-by-case basis. In
10 this case, the outreach was not upfront and aggressive
11 in my community. I read the briefs submitted by UNS
12 Electric and have some concerns about it. I am
13 concerned about the way words are crafted, to put on a
14 good show instead of making apology for the lack of
15 appropriate public outreach.

16 My biggest concern in the brief is that the
17 attorneys keep making comments about the project study
18 area about Elizabeth living outside of the project study
19 area and how they have fulfilled all legal requirements
20 for public notice. I used to be in the project study
21 area for the Rosemont Electric Project, and now the
22 Company has excluded my neighborhood by shrinking the
23 size of the project study area. My community would be
24 directly and indirectly impacted by the Rosemont
25 Electric Project. It is the only community that would

1 suffer any transmission lines in a view shed where
2 previously there has been none. It is the community who
3 would suffer traffic impacts on a dangerous windy scenic
4 highway during the construction phase. Does this mean
5 if I make comments when Rosemont Electric Project study
6 goes in front of the Commission that they will be
7 discounted because I'm not in the project study area?
8 From reading the brief, it seems that way.

9 Newsletters were sent to residents in Tubac and
10 Amado, well outside of the project study area in the
11 Vail to Valencia case. Members in my family who live in
12 the Trails West subdivision just over a mile north of
13 the new construction were not. This is according to an
14 exhibit I printed from Ms. Webb. I'm including it now,
15 so you can see it. It is entitled exhibit EW 17B.

16 No meeting was held in the Vail, Corona, Rita
17 Ranch even though the Vail substation was in our school
18 district boundary. The newspaper advertisements for the
19 open houses 10 miles from the Vail substation and
20 outside of the Vail school district boundaries were
21 ambiguous and did not show any indication that TEP was
22 involved in the project. When I think of upgrade, I
23 don't think of four miles of new construction and
24 switching the line from one electric company to another,
25 even if UNS does. I think the cost of several million

1 dollars for a transformer for future use in the TEP
2 system is something that should have been discussed with
3 its customers.

4 Environmental impacts to the line that was
5 rebuilt, I read in the brief that the portion of the
6 previously reconstructed line will remain unchanged
7 except for being energized to 138kV. I would like to
8 understand this lease information from the Arizona State
9 Land Department for a portion of the rebuilt line. I
10 hope you can help me. It is from last year, and it says
11 the purpose is an above ground 138kV transmission line
12 with internal 24 count fiber optics. Another document
13 says, applicant will construct, operate, and maintain an
14 above-ground 138kV electric transmission line with fiber
15 optic, 24 fiber count.

16 In a letter from UNS Electric to the Arizona
17 State Land Department, it says, the existing steel poles
18 for the 115kV line insulators and conductor will be
19 adequate for the 138kV circuit planned, so when the line
20 is upgraded, we will only have to string conductors.
21 Does the existing rebuilt line have 24 fiber count fiber
22 optics in it already, or will it be placed on the
23 rebuilt line later? This is confusing. If it has to be
24 placed on the line later, it seems like there would be
25 more environmental damages to an area that has -- would

1 have at that point grown back a bit from the last
2 construction. If it has to be replaced on the line
3 later, it seems like the attorneys were not correct in
4 what they said about the line remaining unchanged.

5 I have driven in the rebuilt area between the
6 Nogales tap to Santa Rita Road with Elizabeth. There
7 are a minimum of two roads next to the new poles in many
8 locations. I think it is because the Company cut off
9 the bottom of the old wooden poles, moved over, and made
10 a new road for the metal poles. One suggestion to stop
11 OHV use is to plant barrel cactus in the road that has
12 been discontinued by the company. I also notice that
13 people had sheds and fences under the rebuilt section of
14 the line.

15 Our community will be the most environmentally
16 and ecologically damaged done to it in association with
17 this project more than any other. The environment
18 includes humans who live on it. Our community is the
19 only community with the new construction involved with
20 17 planned projects from the Vail substation in the next
21 25 years, plus other projects, such as the Rosemont
22 Electric Project and the planned Trico substation in New
23 Tucson. It is very obvious that our area is at risk.
24 It is really at risk because we have a very small
25 population compared to the number of projects planned.'

1 I'm not opposed to transmission lines if there
2 is upfront and aggressive public involvement. I'm not
3 opposed to transmission lines if the Company can show
4 there is a need. I'm not opposing the project. What
5 I'm doing is asking for the logical thing, public
6 involvement in transmission planning that has
7 accountability. It is a huge cost-savings measure over
8 what happens when these cases go in front of the ACC,
9 and the Vail substation has an enormous amount of
10 projects planned in the future. Thank you for Kim Rego.

11 CHMN. MAYES: Thank you very much, JJ, for
12 reading that for Kim Rego.

13 Next we will go to Bob Iannarino. Mr. Iannarino
14 is here to answer any questions about his conditional
15 support letter.

16 MR. IANNARINO: Yeah, Chairman, Commissioners,
17 I'm Bob Iannarino of South Wilmot Land Investors. I'm
18 just here to paraphrase the letter sent to you last week
19 dated September 8th to answer any questions that you may
20 have.

21 CHMN. MAYES: Commissioner Newman.

22 COM. NEWMAN: Good to see you Bob. The Company
23 you are representing today is who, and who are the
24 principals?

25 MR. IANNARINO: Well, the principals, okay, this

1 is an entity of Diamond Ventures, okay. It is a -- one
2 of our master planned communities called Verano,
3 3200 acres, that was entitled back in 2004. So the
4 entity name is South Wilmot Land Investors managed by
5 Diamond Ventures.

6 COM. NEWMAN: And you are supporting the line?
7 Are you going to need the line for the development?

8 THE WITNESS: I think we have conditional
9 support of the CEC recommendation based on the line
10 staying on the east side of Wilmot Road. We felt it
11 prudent on our part, after we became aware of the issue
12 with BLM near the Nogales tap, that we wanted to get on
13 record with a letter concerning the physical intrusion
14 of that remaining 110-foot of the 500-foot corridor that
15 could impact our frontage of Section 12, which is part
16 of our community. There is extensive landscape
17 enhancements, drainage enhancements, and things that
18 need to be done along that frontage, so we just want to
19 go on record for that.

20 COM. NEWMAN: So obviously, you are a
21 stakeholder in the case, and your company very well, and
22 I'm sure UNS knew you were a stakeholder in the case.
23 What do you think about when you listen to the public
24 comment and some of the citizens in the area were
25 restricted because of restricted zone of study? An

1 honest opinion or professional opinion or a combination
2 of both.

3 MR. IANNARINO: Well, you know, I think from our
4 standpoint, we were aware of the current physical
5 infrastructure along that reach. We had the Nogales tap
6 substation. There is the WAPA overhead lines along that
7 area, then the existing 115kV line that was already
8 along that alignment along Wilmot Road that we felt it
9 was, you know, something that was in existence that we
10 needed to deal with. So with that understanding, we
11 looked at it that this is a line that was to enhance
12 Nogales, I believe. I'm not sure it is providing power
13 to this future community, but it probably could be in
14 support. I don't know that.

15 COM. NEWMAN: So I'm just trying to make sort of
16 a sociological point about how the planning process
17 worked. You are a very reputable company, have a lot of
18 people watching your prospective investments. So right
19 away, you knew that this is something you needed to
20 watch. You probably had a liaison with TEP about it?

21 MR. IANNARINO: I think the correspondence that
22 is on record concerning a meeting with TEP was back in
23 2007, and it involved then understanding of the
24 sensitivity to this corridor and also to our
25 understanding at that time that the alignment we were

1 concerned about for the Verona project was going to
2 remain on the east side. So at that point, we were
3 aware of it, but decided at that point to not intervene.

4 COM. NEWMAN: And I'm -- I know you pretty well.
5 We've known each other for some time. I'm trying to
6 make a point. You would agree that citizens who are not
7 as savvy to the process wouldn't know to bring a letter
8 to the Company saying, I want to be a stakeholder right
9 from the beginning because it affects my village. They
10 are not savvy enough, as savvy or adventurous enough to
11 do something like that; right?

12 MR. IANNARINO: I would have to concur with
13 that. Again, certainly, we have to interact with the
14 communities on any entitlement work, so from your
15 statement, I guess that would be a correct statement.

16 COM. NEWMAN: Thank you. And thanks for being
17 here.

18 CHMN. MAYES: Thank you very much. Gail
19 Getzwiller, and after Gayle, Sherri Stinnett.

20 MS. GETZWILLER: Actually, this is not my
21 letter. I only have one copy of my comment, which I can
22 give to you.

23 CHMN. MAYES: Ms. Getzwiller has handed out
24 Sherri Stinnett's letter, and you are going to provide
25 your own comments now?

1 MS. GETZWILLER: Yes.

2 CHMN. MAYES: And in the interest of time, I
3 think it is probably not necessary to read Sherri's
4 letter. Is she not here?

5 MS. GETZWILLER: She is not here.

6 CHMN. MAYES: The Commissioners can read it, and
7 we have several public comments we do need to get to.

8 MS. GETZWILLER: Mine isn't that long.

9 CHMN. MAYES: Okay. Thank you for being here.

10 THE WITNESS: Thank you. My name is Gayle
11 Getzwiller, and I'm from Sonoita, Arizona, and I
12 appreciate you coming to Tucson so that the local people
13 can have comments on the public hearing. You might
14 remember me from the 69 kV project in Sonoita in Santa
15 Cruz County, and as a member of a small community, rural
16 community that has ties to the Vail region through the
17 past histories of the Empire Ranch owned by Walter Vail
18 and other ranching associations. I am here today to
19 speak of my concerns about a few things.

20 I am a member of the SSVEC co-op and a member on
21 the utility company that engages in transmission line
22 planning in the Southeast Arizona Transmission Study
23 group, along with other utilities. I have experienced a
24 lack of meaningful dialogue between SSVEC and its
25 members regarding local transmission line planning.

1 This lack of responsiveness by the utility companies
2 creates a situation where ratepayers, members, and
3 taxpayers are forced to send vast resources of time and
4 money to change and/or protect their communities.

5 In the Vail to Valencia case, it is quite clear
6 the project will be associated with many other projects
7 in the area. It only makes sense to create a citizens
8 advisory council to fulfill a role that has until now
9 been excluded from the planning process. A citizens
10 advisory council is most cost-effective way to balance
11 the needs of the environment against the best interest
12 of the public.

13 CHMN. MAYES: Thank you, Gayle, for being here,
14 again. Appreciate it.

15 Ron Campana, and after that, Kathi Campana.

16 MR. CAMPANA: I would like to give you some
17 photographs.

18 CHMN. MAYES: Okay.

19 MR. CAMPANA: If you would look at the top set,
20 the top set is a set of photographs of the distribution
21 line that runs from Canez substation west across the
22 floodplain of Tubac canyon. The second set is the west
23 alignment that is proposed in the exception.

24 My name is Ron Campana, and I live in Rio Rico
25 in the area of Segment 2 that is -- is -- in the current

1 alignment. I have -- my wife and I own three pieces of
2 property in the current alignment, and was pleased when
3 the --

4 CHMN. MAYES: Mr. Campana, can we just take a
5 break here? We just got different sets of pictures, I
6 think.

7 COM. NEWMAN: You have two sets, and we are not
8 sure which --

9 (Discussion held off the record.)

10 CHMN. MAYES: Go ahead. We've got it.

11 THE WITNESS: I live in the -- in Rio Rico, in
12 the area of Segment 2 in the current alignment. My wife
13 and I own three pieces of property that were on the
14 current alignment. We were pleased that the line siting
15 committee chose the preferred alignment in their
16 hearing. However, we believe that there is a better
17 alignment, and that would be west of the railroad grade
18 on agriculture property that is owned by a developer in
19 Rio Rico.

20 There has been a number of comments and concerns
21 about putting the transmission line on the west
22 alignment and regarding the water table level, the
23 damage to the railroad grade, and environmental
24 concerns, but I've talked to Alejandro Barcenas, and he
25 is the area director with ADWR in Santa Cruz County, and

1 he tells me the water table is essentially the same on
2 the east and the west side of the railroad grade. And
3 as far as damaging the railroad grade, the transmission
4 line poles would be about 100 feet west of the railroad
5 right-of-way, and the environmental concerns with the
6 riparian habitat and mesquite bosque, in that area. In
7 that area from Ostion south to Canez, the mesquite trees
8 are very immature and very sparse in that area, and
9 there is a lot of open areas that are -- would have a
10 less impact than putting the transmission line on the
11 east side of the railroad grade.

12 I've talked to the Santa Cruz County floodplain
13 coordinator and John Hayes, and I've asked him to
14 accompany me on a walk on the west alignment, because he
15 wrote a letter and voiced some real concerns about the
16 issues of the west alignment. However, he did not do
17 that with me. I also -- I gave you a set of photographs
18 of the distribution line that runs west out of the Canez
19 substation across to Peck Canyon, and the reason why I
20 did that is that there is number of photographs that
21 show the distribution line poles, and it doesn't appear
22 that UniSource took any particular special measures to
23 protect those poles when they installed them in that
24 area.

25 I just wanted to point out that UniSource is

1 exempt from the floodplain ordinance per the Arizona
2 Revised Statutes, and an access road already exists on
3 the west alignment, and they would have to probably not
4 do any -- take any special measures to improve that road
5 to gain -- to have access.

6 On the east side, UniSource would probably have
7 to construct a road along the east side for their
8 installation and maintenance of their transmission line.

9 I just wanted to say, and I sent you a letter
10 earlier regarding our support of the exception, and I
11 hope that you will give this proposal consideration, and
12 I think it would be a win-win situation for UniSource
13 and the property owners that live in Rio Rico. It would
14 remove the transmission -- or the transmission line off
15 of private property onto ag land that is -- that won't
16 have much of an impact to the community. Thank you.

17 CHMN. MAYES: Commissioner Newman.

18 COM. NEWMAN: It is very interesting testimony.
19 I need to be enlightened on some of the issues that you
20 brought up, because they are bigger issues than any
21 other of the opening commenters have commented on, and
22 these are some of the issues we have to decide in this
23 case, and, of course, they would be contrary to the
24 ruling of the original committee, so we have to have
25 some reason to do it, and we would have to have research

1 issues and all of that.

2 One of the things -- one of the other common
3 themes here is -- in this case is whether or not there
4 can be transmission lines in a floodplain, and you had a
5 whole dialogue about how you interacted with the
6 Santa Cruz County floodplain, and I know that there is a
7 letter in the file from the Pima County floodplain
8 folks. Is it Santa Cruz? It is only Santa Cruz.

9 MR. CAMPANA: Santa Cruz County.

10 COM. NEWMAN: I'm sorry, that was my mistake, so
11 it is only Santa Cruz County floodplain folks involved
12 in this, not --

13 MR. CAMPANA: Yes.

14 COM. NEWMAN: -- not Pima County.

15 MR. CAMPANA: Yes.

16 COM. NEWMAN: Okay. So is there a letter in the
17 file about that? Did you discuss that with them?

18 MR. CAMPANA: Yes, yes, and John Haines, he has
19 taken a position that he would recommend against putting
20 it on the west side of the railroad grade.

21 COM. NEWMAN: Right. That is his official
22 position?

23 MR. CAMPANA: Yes.

24 COM. NEWMAN: But you were saying something
25 different in your testimony, so I just wanted to clarify

1 that point, because that is one of the issues that we
2 have to look at.

3 MR. CAMPANA: In UniSource's comments, in their
4 brief, they said that they can do it. They can, and
5 they've done -- in Pima County, they've done a pretty
6 good job of putting transmission line poles in the
7 channel, the river channel and on the floodplain next to
8 the channel on the Santa Cruz River and the Rillito
9 River, and so they have the ability to put these
10 structures in areas that might be impacted by floodways
11 or floodplain, and we are not asking for the trans- --
12 the transmission line be put in the channel. It is
13 about 1,000 feet east of the Santa Cruz River, in most
14 areas, from Osteen down to the Canez substation, and it
15 would only be about six structures, and I'm sure that
16 they have the capability of putting those on foundations
17 that would support -- protect them from any impacts from
18 the floodplain or floodway during an event.

19 COM. NEWMAN: Well, this is an issue that I need
20 to do a little more research on. I would like the
21 parties to talk about it, because it is antituitive, in
22 a sense. I just came from eight years of being county
23 supervisor in Cochise County and by law, you can't put
24 any residential structures anywhere near a floodplain,
25 in a floodplain. I mean, very rarely. One in 1,000 do

1 we do that. So this is the first time I'm having a case
2 before me of putting a major structure near the
3 floodplain, and you just testified that in Pima County
4 they actually put them right in the Rillito. So that is
5 fascinating to me, and I need to know more about that
6 subject.

7 You also mentioned that that is private -- that
8 agriculture land should be distinguished from private
9 land in some way, because that is -- I don't know
10 whether it is state trust land or what it is. I would
11 be interested in knowing what it is, but it is grazing
12 land of some sort.

13 MR. CAMPANA: Yes, sir.

14 COM. NEWMAN: They are not growing cotton on it?

15 MR. CAMPANA: No. It is agriculture land. It
16 is owned by the developer Avatar in Santa Cruz County,
17 and they lease a great deal of that property to ranchers
18 that graze cattle on it. So the cattle probably like it
19 because they can rub their heads and butts on the poles
20 that are put there, so -- but there is less impact. It
21 will grant relief to the 25 property owners that are in
22 the preferred alignment along the east side of the
23 railroad grade, and I think that would be a goal that
24 any utility should strive for is to get those structures
25 off of private property and put them in places that have

1 less impact.

2 COM. NEWMAN: It is interesting, and I will stop
3 right here. But I had a meeting last Friday with the
4 new head of the Bureau of Land Management in Arizona,
5 and we were discussing, you know, when we put power
6 lines in whether we put it on private land or public
7 land and sometimes we also have to look at the
8 environmental impacts for the public land. In fact,
9 they may have -- these are some issues that I need to
10 know more about, but his position is that we should
11 consult with the -- you know, if we had an ability to,
12 we should consult with the holder or the state land
13 holder, whichever it might be in this case, and I think
14 that there is something to that, so -- but they see it a
15 little differently, and you can understand why.

16 MR. CAMPANA: And I think the property owner
17 that owns the ag land has said that they will not --
18 they would not object to putting those structures on the
19 west side of the railroad grade, so...

20 COM. NEWMAN: Thanks so much for your testimony.

21 CHMN. MAYES: Commissioner Pierce.

22 COM. PIERCE: I appreciate your comments. I
23 think it is the responsibility of who runs the flood
24 control district to keep as many things out of the
25 floodplain as possible. And I am certain that any

1 engineer can tell us how much rebar and concrete it will
2 take to make sure we have a stable environment for any
3 line there. That is why I'm sure UniSource/TEP is
4 saying, you know, we can build that, because it can be.
5 And I think that the flood control district would
6 recognize that. I don't think that is really an issue.
7 I think that is -- we build -- recently, the natural gas
8 line builder built substantially a large natural gas
9 project, and the part over the Gila River is rather
10 substantial, and/or through the Gila River. And so they
11 do that, and we have to do that all along Arizona for
12 infrastructure for power, and so it is a common thing.
13 It is not something -- I appreciate your comments, and
14 I'm with you on that. That is really something we call
15 a red herring. It is just something to deal with. If
16 it is the right place for it to go, then that is the
17 right place for it to go.

18 MR. CAMPANA: Thank you.

19 CHMN. MAYES: Thank you, Mr. Campana, and for
20 your past participation.

21 Kathi Campana. So Kathi, and then after Kathi,
22 Sherri Sass. And then I don't have any public comment
23 slips after Sherri, but if you have one and would like
24 to provide public comment, just bring one up to one of
25 our staff members.

1 MS. CAMPANA: Good morning. My name is Kathi
2 Campana. I'm a resident and stakeholder in Segment 2 of
3 the proposed project. By way of clarification, the
4 existing lines are in the floodplain, also, so it is not
5 going to matter where they move them; they will be in
6 the floodplain. The difference being that if it were to
7 go 1,000 feet west, they might be in the floodway.

8 I walked this a couple weeks ago with my
9 husband, who took all these wonderful pictures, and if
10 you look on Page 3 of the pictures, I believe the bottom
11 three kind of are lots down the railway looking south,
12 so you can see that the east side is actually a lower
13 elevation than the west side. When I walked it, and we
14 do walk the railroad grade periodically, when we are on
15 the east side of the railroad grade, I can't see over
16 the lines. I'm five feet tall, so you can guess how
17 high the -- how high the rails are. On the west side
18 when we walked it, I was looking right across them. I
19 thought, wow, this is really great. If you put the
20 poles in here, and you have to put the foundation in
21 cement to the elevation of those rails, it is actually
22 cheaper to put it on the west side. Actually, that
23 wasn't what I was going to talk about. I just wanted to
24 clarify that.

25 I sat down and tried to do a case for and

1 against the west alignment, and the only drawback I
2 could find was that it may require a turning pole to do
3 the west alignment. And I do need to clarify also, not
4 from Canez Osteen, from Kiwi Court. There is a segment
5 of the river that comes close to the railroad grade
6 between Kiwi Court and Osteen. So we are only dealing
7 with Kiwi Court to the Canez substation. Kiwi court
8 being where all of the residents that are currently
9 impacted start.

10 That was the only drawback I could see was there
11 was a turning pole possibly, and I believe they cost a
12 little more.

13 The benefits are that it will save money,
14 because the foundation of those structures does not have
15 to be as high an elevation. It will take those
16 structures completely away from residences. The ranch
17 road is already built without invasive brush cutting or
18 tree cutting to provide an access. That ranch road,
19 based on those pictures, is definitely big enough for
20 bucket trucks and their construction equipment to go
21 down. In addition, no floodplain elevation permit would
22 be required, because it is required to build a road,
23 even if you are a utility. But the roadway is there.
24 So while they are exempt from a permit for the
25 structures, they wouldn't have been exempt to build a

1 road. There is also a road.

2 The west side, again, is a higher elevation than
3 the east side. I would say the tracks are maybe three
4 feet above the grade of the ranch road, and I know that
5 it has got to be five or six feet or more on the east
6 side.

7 I can also state in all honesty that 100 percent
8 of the residents who live in that area, those
9 stakeholders, favor the west side. I have a petition
10 signed by every property owner except Avatar, and Avatar
11 already indicated by e-mail that they had no objection.
12 They simply couldn't sign it. It would have had to have
13 been sent to Florida for signature.

14 And there are two residents -- two property
15 owners, one in Rhode Island and one in Colorado, that I
16 did not contact, but while their properties are
17 impacted, they are not. They don't live there. I took
18 this petition to Avatar yesterday to ask Sheila to sign,
19 and she said she couldn't, but she had sent an e-mail to
20 Sherri Sass and copied several other people that were
21 interested that Avatar had no objection to the 1.3 miles
22 between Kiwi Court and the Canez substation. It
23 actually only affects maybe six poles. And a bigger
24 benefit would be, since there is already a distribution
25 line on the east side, is that distribution line was

1 already under -- on the west side and all of those
2 rights of way abandoned for the sake of those property
3 owners.

4 In walking this, we saw that the mesquite
5 bosque, what little there is of it on the west side, was
6 very immature and did not have all the additional
7 components of the mesquite bosque, the hackberry and the
8 Elderberry and the same density and diversity that was
9 on the west side -- on the east side.

10 And in addition, access for UniSource or TEP is
11 assured on the west side for inspection and maintenance
12 purposes. So basically, in summary, this will increase
13 property values, public safety, UNS access, the mesquite
14 bosque protection, resident satisfaction, and an
15 improved view shed. I believe that I sent to the line
16 siting committee, and it should be entered into the
17 record, letters also from the Rio Rico Property Owners
18 Association, the Boca Float Coalition. This entire area
19 is part of the original Boca Float land grant. I
20 believe there is one also from the Board of Realtors,
21 and probably several from my husband and myself.

22 I can speak on their behalf as a chairperson or
23 director, and they all agreed that the west side would
24 improve property values, would improve our standard of
25 living, and generally make us all much happier. Any

1 questions?

2 CHMN. MAYES: Kathi, I have one question on the
3 back page of the petition, you've highlighted the lots.
4 I assume these are the highlighted portion of the bosque
5 of the people that signed the petition?

6 MS. CAMPANA: Correct. The two on Lulu Court
7 are the two that live out of state, Rhode Island and
8 Colorado. The two -- the one at the end of Vino and the
9 one at the end of Angel Court are both owned by Avatar,
10 and I think I specified that. And out of 20 actual
11 lots, there are only somewhere between 9 and 11 lot
12 holders that UniSource would have to negotiate with each
13 one of those on the west side. They have one just to
14 negotiate with, Avatar, and so it would save their
15 right-of-way acquisition efforts, also.

16 CHMN. MAYES: And the -- when you say west side,
17 you mean on the west side of the railroad that is
18 located -- that is pictured on the west versus the east
19 side of that?

20 MS. CAMPANA: Correct.

21 CHMN. MAYES: Okay.

22 MS. CAMPANA: Yes, the railroad grade being the
23 line of demarkation.

24 CHMN. MAYES: Thank you very much.

25 Commissioner Stump.

1 COM. STUMP: Hi, Kathi. Good to see you again.
2 I had a couple of quick questions. You had mentioned in
3 your letter dated -- well, let's see, we received it
4 July 23rd, that you chatted with John Hayes, and it
5 sounded as though from your letter he wanted to expand
6 upon his letter. Did you ever hear back from him, and
7 did that extension ever occur? He was out of town, I
8 believe.

9 THE WITNESS: He subsequently sent a letter that
10 was even worse than the first one, and when we asked him
11 about it and asked him if he had even gone out there and
12 walked it, he said, No. And we said, But it is a higher
13 elevation, he said, I don't care. You people knew those
14 lines were there when you bought, and I have no
15 sympathy. And so it almost made me feel like he
16 specifically wrote this letter as a punishment. That is
17 a terrible thing to say, but it was not -- it was not
18 based upon his knowledge or his actual visual assessment
19 of the area.

20 COM. STUMP: And I had received, or we all did,
21 a letter from Avatar on August 24th addressed to Shannon
22 Breslin by Eric Finkelberg, and it was his opinion that
23 the west alignment option would result in, and as he
24 puts it, moving large stands of mature cottonwoods. Do
25 you disagree with him on that?

1 MS. CAMPANA: 100 percent. Again, I walked it.
2 Between Kiwi Court and the Canez substation, there isn't
3 a cottonwood standing. There are some pictures, you
4 will see, of Mr. Magruder standing in front of the
5 stump. That was 19-foot diameter. The railroad cut it
6 down. There was one right at the end of Kiwi Court on
7 the west side that was 13-foot -- not diameter, sorry.
8 That made it a really big tree -- that was cut down, but
9 there aren't even any immature ones on that side left.
10 They have all been removed by the railroad when they did
11 their clearing a year ago.

12 COM. STUMP: Appreciate it.

13 CHMN. MAYES: Commissioner Newman.

14 COM. NEWMAN: Yeah, I find the statements about
15 the cottonwood groves, the alleged cottonwood groves
16 very obstructive, and where is Avatar based out of?

17 MS. CAMPANA: Florida.

18 COM. NEWMAN: And the owner is Mr. Finkelberg?

19 MS. CAMPANA: I believe they have a whole board
20 of directors. I don't know who the specific owner is.
21 Again, there isn't any cottonwoods on the west side of
22 the railroad grade between Kiwi Court and Canez. There
23 are a couple on the east side.

24 COM. NEWMAN: I'm glad that Mr. Stump brought up
25 that issue, because we also have some public comment,

1 and I would like some clarification about this, that
2 perhaps Avatar may have changed its position, which is a
3 bit perplexing for us at this time. We won't -- I don't
4 think we are voting on this today. Is that right, Madam
5 Chair?

6 COM. MAYES: It depends. I think --

7 COM. NEWMAN: Well, the problem -- that is a
8 rather big --

9 CHMN. MAYES: We don't have any amendments in
10 front of us today, so if my colleagues want to amend the
11 item, it will probably require postponing the vote.

12 COM. NEWMAN: I'm just bringing this up, because
13 that is a very big factual --

14 MS. CAMPANA: There is a --

15 COM. NEWMAN: -- contradiction.

16 MS. CAMPANA: There is an e-mail that Sherri
17 Sass has from Avatar stating they have no objection to
18 the west side.

19 COM. NEWMAN: Well, that -- I need to confirm
20 that, as well, before we run around -- run amendments on
21 this. I don't have an amendment prepared today. I
22 thought we were taking public testimony. I thought we
23 might vote on this at a later date, but I want to make
24 sure that that was Avatar's position before I ran that
25 amendment, or if I would run that amendment, even if I

1 considered running that amendment.

2 MS. CAMPANA: She will be providing you a copy
3 of the e-mail.

4 COM. NEWMAN: I was going to ask you one
5 question about the highlighted areas of your
6 neighborhood. You described yourself as a stakeholder,
7 because you are in the study area. Was this the study
8 area --

9 MS. CAMPANA: Actually, the line is in my back
10 yard. I guess I'm a stakeholder.

11 COM. NEWMAN: I understand.

12 MS. CAMPANA: Actually, both of the houses I
13 have, it runs right behind the current transmission
14 line.

15 COM. NEWMAN: But your map was instructive of,
16 as well, about the number of people in the village that
17 were not necessarily in the study area, per se. The
18 study area is narrow.

19 MS. CAMPANA: Correct. But these are the people
20 who are impacted by the existing line and the proposed
21 line.

22 COM. NEWMAN: Right. I would like some more
23 information, just through all that is present. I'm
24 looking at the UniSource counsel about noticing and how
25 research study areas are produced. Is it statutory? Is

1 it discretionary? That is an important question. Thank
2 you. This map shows it pretty clearly that many, many
3 affected people probably were not included in the study
4 area.

5 MS. CAMPANA: I don't know the range that they
6 sent the letters out on, but the ones that have the
7 little black squares on them, those are residences. The
8 others are vacant land, so you will see that it -- the
9 one with the little black squares on them, those
10 indicate residences, and that map is probably a couple
11 of years old, so new houses aren't going to show on it,
12 but the majority of the property is vacant land.

13 And then, just as a little note, when we
14 testified before the Line Siting Committee, actually a
15 majority of them were in favor of the west alignment
16 until the eleventh hour letter arrived from John Hayes,
17 and we were unable to rebut it, because all of the
18 testimony was passed.

19 COM. NEWMAN: That was one of the questions I
20 wanted to ask, but I didn't want to get into. We give a
21 lot of recognition to the Line Siting authority. There
22 are appointees. All of them are widely respected in the
23 community, and we don't like to disagree with them, but
24 if there is something substantive, we do. And so I had
25 a hard time believing that -- for example, my friend

1 Mike Palmer, who is one of my appointees and former
2 county supervisor for Cochise County and former member
3 of legislature, that if he heard the testimony that we
4 heard today that he would not be reticent about doing
5 anything to the community as long as there wasn't too
6 much opposition.

7 MS. CAMPANA: That was the thing that actually
8 made us feel really good. They looked like they were
9 going to go for the west side, and then, during the
10 lunch hour, this e-mail letter came in, and all public
11 comment was passed. We couldn't rebut it. And we
12 didn't know at that point that he had never even been
13 out on-site. So it was only subsequent to that that we
14 were able to contact him and say, Why did you do this?
15 And he told us, Well, it is your fault. You moved
16 there. But, anyway, so that was what typically changed
17 their mind was that they felt there would be some
18 liability, because he said, Oh, if you put a structure
19 there, it will undermine the railroad and wash it out;
20 therefore, it will flood every house on the east side,
21 and we are just going, Wait a minute. But they didn't
22 know. They've never been on-site or they hadn't been to
23 that area.

24 COM. NEWMAN: I just have one small comment.
25 Avatar, and I don't mean this at all derogatory, the

1 genesis for the word "Avatar" is, the enlightened
2 company, the enlightened ones, and I'm not sure this
3 particular instance described an enlightened moment, but
4 thank you very much.

5 CHMN. MAYES: Thank you very much.

6 And Sherri Sass.

7 CHMN. MAYES: Commissioner Kennedy, are you on
8 the line? Commissioner Kennedy, go ahead.

9 COM. KENNEDY: A clarification, I have a
10 question for Ms. Campana. Are you going to take a vote
11 on this today?

12 CHMN. MAYES: Well, you know what? That is a
13 good question. I was just reviewing the procedural
14 order. Ms. Wagner, after reviewing the procedural
15 order, I'm not sure whether we can. So can you clarify
16 that for us?

17 Well, go ahead. I don't know if you've had a
18 chance to review it again.

19 MS. WAGNER: Good morning.

20 CHMN. MAYES: Commissioner.

21 MS. WAGNER: Good morning, Madam Chairman,
22 Members of the Commission. I apologize for my
23 difficulty with the Mike. I was just looking at the
24 open meeting agenda, and the open meeting agenda does
25 indicate a possible vote on the matter. However, when I

1 look at the timeline, the Commission actually has until
2 September 28th to act on this matter, so if you choose
3 not to vote today, you still have until September 28th
4 to schedule a subsequent open meeting at which to have a
5 vote.

6 CHMN. MAYES: Okay.

7 MS. WAGNER: So in short, you may vote if you
8 choose, but you don't have to, because you have until
9 September 28th.

10 CHMN. MAYES: So, Commissioner Kennedy, I
11 actually had come in to today's meeting believing that
12 we may vote on this. We did not have any amendments to
13 the item, but, obviously, we've had some public comment
14 that has raised some questions among commissioners, and
15 we haven't yet gotten to the oral arguments, so they may
16 raise further questions. So it is up to the bench, my
17 colleagues, to decide whether they want to take a vote
18 or perhaps just defer this to the next commission open
19 meeting, which, certainly, I would be open to if that is
20 the drothers of my colleagues.

21 MS. KENNEDY: Thank you for the clarification.

22 CHMN. MAYES: You are welcome.

23 Okay. Sherri Sass.

24 MS. SASS: Thank you, Commissioners. I also
25 want to thank you for having this meeting, making it

1 accessible to us. I know this is, especially about the
2 exception is a small area, but I'm hoping to convince
3 you that -- it is a small area, but it has a big
4 ecological impact. I'm Sherri Sass, president of the
5 Friends of the Santa Cruz River, which is a little
6 volunteer group dedicated to protect the habitat, mostly
7 in Santa Cruz County. If you look at the second-to-last
8 page of the packet I just gave you, all of these maps
9 and photographs and things are from the riparian
10 vegetation map that Friends of the River helped the
11 county get a grant for, and I think we did it 2005, 2006
12 where we mapped all the riparian river-associated
13 vegetation. That is how important this ecosystem is to
14 the county, this small, poor county, but they really
15 felt it was important enough to put some money into.

16 It was done in a combination of remote cencing
17 and on-the-ground truthing, ground truthing, but we
18 couldn't go everywhere, so they are really vegetation
19 associations. So it is kind of a rough idea, anyway, of
20 where the good stuff is, where the real important
21 habitat is. This mesquite forest alliance 4 on
22 Attachment 5, this shows you that the green is pretty
23 much in the whole stretch from -- well, almost the
24 border. It is the Mexican border on the south and the
25 county line to the north. So the green is where the

1 mesquite forest alliance is.

2 Now, that is -- it is a certain canopy density,
3 and it is not real specific as to species, but anyway,
4 you can see that the green is just almost all in the Rio
5 Rico area. It is really not much north of north Rio
6 Rico. And then, just to compare, if you look at the
7 last page, Attachment 6, this is from the -- all this
8 stuff is on the web on the county website in the
9 community development. So this is the cottonwood willow
10 forest. This is the more famous habitat, perhaps, but
11 you can see it is really mostly north of Rio Rico. You
12 can see where it starts halfway between Rio Rico and
13 Tubac and ends north -- just north of Tubac. So really
14 this mesquite forest alliance on Attachment 5, this is
15 really what Friends of the River is most concerned
16 about.

17 Now, the other three -- the first three
18 attachments show more specifically this exception area,
19 and actually, if you look on Attachment 4, that is the
20 whole area of concern that we are discussing. Actually,
21 if you look -- I know it is very colorful. I tried to
22 outline in black marker that zone that we are talking
23 about of major concern, and you can see, I think I've
24 highlighted in orange where the transmission line
25 currently is. It runs down on the east side of the

1 railroad tracks. And you can also see just when you are
2 talking about the river and John Hayes concern, the
3 floodplain coordinator, you see how the river wraps
4 right neck to the railroad tracks and makes a sharp turn
5 to the west.

6 And then, as Kathi Campana is saying, is way
7 over the to west. So the floodway of the river, the
8 part that I believe John Hayes is most concerned about,
9 is really where the river is, the low flow canal, and it
10 heads way west just north of where Marshall Magruder is
11 talking about moving this west alignment. So I hope
12 that is helpful for you.

13 But anyway, what I mostly want to talk about was
14 the rarity of this bosque area, and as I said, this
15 forest, this Attachment 5, is rare enough. It is --
16 only about two-tenths of one percent of the land area of
17 Santa Cruz County is in this mesquite forest or bosque.
18 Then there is a subcategory of bosque, which is mature
19 bosque, and there is a huge difference in terms of
20 habitat importance. You can call a regrown field, that
21 has mesquites that are maybe ten feet high but they are
22 really put close together, you can call that a bosque,
23 but it doesn't have the structural complexity of a
24 mature bosque, which also has hackberry and elderberry
25 and gray thorn and wolfberry and vines like crazy and

1 you can't see through it and you can't walk through it,
2 most of it. It is so dense, and it creates an enormous
3 number of niches of biological spaces for a lot of
4 animals to coexist in a very narrow small area.

5 So this pine bosque, this mature bosque, is a
6 subset of that Attachment 5. We are talking about five
7 percent of what you see here of that little green stuff
8 that is on the alignment on Attachment 5. Five percent
9 of this is the good stuff.

10 Marty Jakle, who is our efficient U.S. Fish and
11 Wildlife retired biologist, he is sorry he couldn't be
12 here. He is in Illinois right now. He is one of the
13 property owners, and he calls this "the good stuff."
14 Now, where is the good stuff? The good stuff is mostly
15 just to the east of the railroad tracks along the
16 current distribution line alignment, which is the
17 preferred alternative, and it is really upsetting to us
18 that a Certificate of Environmental Compatibility was
19 granted to this route, especially in this area. And,
20 again, I'm back on Attachment 4, kind of the overview
21 picture of where this habitat is.

22 On this current transmission line -- let me just
23 back up a minute in context. So you've got the hills
24 coming down from the east, Foothills of the Santa Rita
25 Mountains. And so they are coming down and heading

1 toward the river. Well, the groundwater is going that
2 way, too, and the lower in elevation, the shallower the
3 groundwater table. The shallower the groundwater table,
4 the more this bosque can develop.

5 So as you get closer to the railroad tracks on
6 the river, the bosque quality improves, and, of course,
7 it is very disturbed. There is lots of building. There
8 is agricultural fields. But right now, the current
9 situation is that the prime stuff, the mature bosque is
10 most developed right under the current distribution
11 lines, the preferred alternative route. And our concern
12 is, even though that area has been disturbed, it hasn't
13 been clearcut to 100 feet like under the transmission
14 lines. That is number one.

15 Number two is, the current transmission lines
16 are to the east, so they are higher. The quality of the
17 habitat is less. There is groundwater tables lower, so
18 you are actually going from an area -- a more disturbed
19 area of lesser quality habitat to a less disturbed area
20 of great quality habitat in this preferred alignment.
21 So the idea of giving this a Certificate of
22 Environmental Compatibility, to us, is something got
23 missed. I don't know what happened. I realize a long
24 set of lawyers, a lot of information was given, but it
25 is -- to me, that is the worst possible choice is this

1 preferred alignment. And I believe Scott Wilbur of
2 Tucson Audubon also sent in a letter. He has been
3 studying this area for years. He did an avian habitat
4 conservation plan for the Santa Cruz River, Santa Cruz
5 County some several years back. He has done several
6 breeding bird surveys and found it is the good stuff
7 right along that track here in terms of the mesquite
8 bosque.

9 So to conclude, I just want to reiterate that on
10 the west side of the railroad tracks, if you look at,
11 again, Attachment 4, and you can see it in bigger
12 relief. I think Kathi called it Segment 2. It is
13 Attachment 2. You will see there is a little triangle
14 of what is in green on this map, and it is called 5.001.
15 It is a triangle of good mesquite habitat, this prime
16 mature habitat on the west side of the railroad tracks.
17 But south of that, there is -- it is called Tree
18 Savanna. Basically, it is a bunch of little mesquite
19 trees widely disbursed over the field. It runs for a
20 good way along the west side of the railroad track.
21 There is really not much significant habitat there
22 compared to the east side. So -- and also, it is south
23 of where the river bends in toward the east. So I would
24 think, although I haven't talked to John Hayes, I would
25 think his concerns might be allayed if he understood

1 where the line was going to go and where it wasn't going
2 to go. It is not going to be -- Mr. Magruder is not
3 going to argue that it should be put near the floodway
4 of the river where it is so close to the railroad
5 tracks. It is south of that where he is talking about,
6 and we are as well.

7 In conclusion, we think that the west side
8 alignment of the railroad track, as Mr. Magruder is
9 suggesting, is habitat-wise the best choice. Second
10 best choice would be to leave, at least in this area,
11 from like Kiwi Court down to Canez, to leave the
12 transmission lines where they are, because that is
13 already mostly disturbed. The quality of the habitat is
14 not so great. The worst case scenario is moving that
15 line to where the distribution line is now and opening
16 up that area to clear-cut 100 feet wide.

17 So thank you very much. If you have any
18 questions?

19 CHMN. MAYES: Well, thank you, Sherri.
20 Appreciate the information you've provided in former
21 public comment, and certainly, you provided information
22 that will be important. So we don't have any questions
23 from my colleagues.

24 Oh, commissioner Newman.

25 COM. NEWMAN: It is a process question. And I

1 know, there is always two sides to every story, so I
2 keep wondering when the second side is going to come up.
3 You were able to testify at the line siting hearing
4 regarding the denseness of the bosque on the riverside?

5 MS. SASS: Yes, I was. Didn't help, but I did.

6 COM. NEWMAN: None of the planning, the line
7 siting commissioners even -- did they ask you extra
8 questions about it?

9 MS. SASS: I can't remember, actually. Marshall
10 is nodding, so I guess they did. At that time, I must
11 say, I hadn't walked it. Since, I've walked it several
12 times.

13 COM. NEWMAN: And for a last comment, a fuller
14 comment, when you walk it, what do you see? What do you
15 experience? What kind of animals live in these bosques?

16 MS. SASS: Well, Marty Jakles, his back yard is
17 part of this habitat, and he being a biologist, he is
18 very familiar with it. I walked with him. We've seen
19 Coopers Hawk fledge out of the trees that would be wiped
20 out by where the -- you know, if they move to the
21 preferred alternative, that would be gone. Gray Hawks
22 nesting in cottonwood trees on the east side and forging
23 in the bosque would be impacted. I know Scott, Scott
24 Wilbor, the biologist for Tucson Audubon, knows where
25 the bird nests are and could point out to you, if he

1 could be here, where each one of them would be
2 destroyed.

3 But I can't even tell you how -- that is one of
4 my favorite places along the river, and I've been along
5 the river almost 20 years now, up and down, and as I
6 say, the denseness of this habitat and the tree species
7 and plant species are so diverse that it is unlike
8 almost anywhere else along the river.

9 COM. NEWMAN: We had testimony in the Babocomari
10 case a few weeks ago about birding habitats and things
11 like that. And I happen to know from being on the San
12 Pedro Partnership and knowing about the importance of
13 the mesquite bosques closer to the river and certainly
14 the -- all the other trees that serve as homes for an
15 unusual number of bird species as they traverse the
16 biologically diverse region between the Santa Cruz River
17 and the San Pedro River, where the Sonoran Desert and
18 the Chihuahua Desert come together.

19 Thank you so much for your testimony, especially
20 what it is like to walk down this area and see the
21 hawks.

22 THE WITNESS: Thank you.

23 CHMN. MAYES: Okay. We don't have any more
24 public comment. What I think we will do, we need to
25 give the court reporter a break. She is just going to

1 kill me. What we will do is I think take our lunch
2 break now, if my colleagues are okay with that, and
3 start up with the oral arguments. So we are in recess
4 until about a quarter to 1:00.

5 (Recess from 11:37 a.m. until 12:54 p.m.)

6 CHMN. MAYES: Do we have Commissioner Kennedy?
7 Are you on the line? Not yet. We are going to get
8 Commissioner Kennedy on the line, and then we have one
9 more public commenter. Mr. Gary Grizzle would like to
10 make a public comment.

11 Mr. Grizzle, come on forward, and we should be
12 getting Commissioner Kennedy on the line any second now.

13 Commissioner Kennedy? Hang on just one second.
14 Let's go into recess for about two minutes, and then we
15 will come right back.

16 (Recess from 12:57 p.m. until 12:59 p.m.)

17 CHMN. MAYES: Okay. Commissioner Kennedy, are
18 you on?

19 MS. KENNEDY: I'm on.

20 CHMN. MAYES: We are going to go ahead and get
21 started. We have one more gentleman that would like to
22 give public comment, Mr. Gary Grizzle.

23 Mr. Grizzle, go ahead.

24 THE WITNESS: Good afternoon. My name is Gary
25 Grizzle. I'm with the WLB Group representing Avatar. I

1 would like to clarify a few things that have been said
2 today. Originally, Eric Finkelberg of Florida, who was
3 the vice president of Avatar, wrote a letter, and when
4 we crafted that letter, we were under the impression
5 that we were looking at the alignment that would be on
6 the west side all the way -- the whole distance, all the
7 way from Kotamunde (phonetic) all the way up to where it
8 connects over, I think it is called, Ostion.

9 So when we were looking at the cottonwoods that
10 were out there and other vegetation, the river does
11 meander back and forth, and it does come into areas
12 where -- and it gets close to the railroad tracks. So
13 there are areas, if it goes on the west side the whole
14 distance, that cottonwoods would be removed. So that
15 was one of our concerns back then.

16 Now it appears, and I think it has come within
17 the last couple of weeks, that really we are only
18 talking about a mile section, and it is something that
19 when we originally were looking at this whole situation,
20 we were not accounting for that section. I mean, we
21 were taking in the whole distance. So I know there was
22 an e-mail that was sent, and I have not seen this e-mail
23 that was sent yesterday, that states that Avatar is okay
24 with the alignment for the small section, but I would
25 like to suggest -- or I guess, I would like to study

1 this a little bit more before, if that is an option, we
2 move forward with this, just to understand what this
3 mile section really looks at, because, again, we were
4 under the impression that we were looking at the whole
5 area, and so I just wanted to make sure everybody was
6 aware of that when we wrote the first letter, so...

7 CHMN. MAYES: Thank you, Mr. Grizzle.

8 Commissioner Newman, do you have a question?

9 COM. NEWMAN: Yeah. I was talking about the
10 genesis of the name Avatar, and it has enlightened
11 connotations. I'm sure that there probably was that
12 sort of communication, and I'm just -- we have to
13 discuss this with our colleagues, but it doesn't look
14 like we are going to vote today, and there may be
15 amendments we need to prepare, and we need to make sure
16 those amendments are properly drafted and that all
17 people -- especially -- all parties are concerned,
18 including your company, but I -- I'm a bit confused
19 about the corporate communication of somebody saying,
20 yes, in an e-mail and then you saying you want to study
21 it a little bit now. Did you have a phone conversation
22 with somebody back in Florida today?

23 MR. GRIZZLE: I have not. I just want to make
24 sure that this one-mile section that we are talking
25 about -- I've looked at it briefly on an aerial. I

1 would like to make sure that the person who wrote the
2 e-mail has a full understanding of what we are talking
3 about.

4 COM. NEWMAN: Okay. Are you -- just for the
5 record, where are you based out of? Are you the Arizona
6 manager for the project?

7 MR. GRIZZLE: Actually, we are a consultant. We
8 are an engineering consultant that represents Avatar.
9 We are based out of Tucson.

10 COM. NEWMAN: What company is that?

11 MR. GRIZZLE: The WLB Group.

12 COM. NEWMAN: Thank you for your testimony.

13 CHMN. MAYES: Thank you, Mr. Grizzle. I
14 appreciate your being here.

15 And I think that does it for public comment.
16 Why don't we turn now to oral arguments, and we will
17 begin with the Company, the Applicant.

18 MR. DERSTINE: My notes say "good morning," but
19 it is afternoon. Good morning, good afternoon Chairman
20 Mayes, Members of the Commission.

21 The procedural order indicated that I had
22 20 minutes for oral argument on this. I will try to use
23 that time wisely and cover all the ground that I think I
24 need to cover and to answer your questions. Let me
25 start -- go ahead.

1 CHMN. MAYES: Could you just start by stating
2 your name for the record?

3 MR. DERSTINE: I can do that. Let me rattle off
4 a bunch of names. Matt Derstine and Jason Gellman
5 appearing on behalf of the Applicant, UNS Electric,
6 along the Marc Jerden, associate counsel.

7 Let me go back, then, and give you a little bit
8 of background on this line, the line that serves Santa
9 Cruz County, and then I will talk about the project and
10 the hearing and, ultimately, the exceptions that have
11 been filed and the objections that have been raised to
12 the decision of the deciding committee.

13 Santa Cruz County is served by approximately a
14 50-mile 115kV radial line. That line starts at the
15 Nogales tap. And, Clark, if you can just pull up, we
16 have a map on the board, but maybe we can pull up an
17 overview of the project and the existing line.

18 CHMN. MAYES: Are you able to see the screen
19 with that board in front of you?

20 COM. STUMP: Come to think of it, I am not.

21 CHMN. MAYES: Can somebody move that board for
22 Commissioner Stump?

23 MR. DERSTINE: I will move it.

24 CHMN. MAYES: Thank you.

25 MR. DERSTINE: I don't know if you can see that

1 any better, and maybe the board was more visible, but
2 what you see from the image that is being displayed is
3 that you've got a radial line that starts at the Nogales
4 tap where the line interconnects with the WAPA system
5 here at the north. This line runs south, as I said,
6 50 miles to the Valencia substation down in the City of
7 Nogales. There is also substations that are
8 intermediate along the path, and it is hard for me to
9 see even with my glasses, but you have the Kantor
10 Substation, the Canez Substation in this area and the
11 Sonoita Substation here.

12 In 1988, while these facilities were still owned
13 by citizens, the northern 28 miles of this line was
14 rebuilt to K 78. And let me mention, this line was
15 originally constructed around 1955, 1954. As originally
16 constructed, it was built on wooden H-frame structures
17 top to bottom. In 1988, this 28-mile piece from the tap
18 down to Kantor was rebuilt on steel monopoles. At that
19 time, the conductor and insulators were also replaced,
20 and they have the capability of being energized to 138kV
21 without anything being done to them physically.

22 Let me also mention that one of the important
23 current conditions faced by UNS Electric and its
24 customers is a capacity limitation driven by the
25 limitations to pull power from the WAPA system to serve

1 Santa Cruz County.

2 With those features in mind, let me talk about
3 the application and what the Company has asked to do.
4 The application seeks to rebuild the remaining length of
5 the line from Kantor south on steel monopoles. It seeks
6 to replace the conductor along this same path. And
7 importantly, it seeks to a new interconnection with the
8 Vail Substation at the north to loop this system, the
9 UNS Electric system, into Tucson Electric Power
10 Company's system, eliminating the capacity limitations
11 and problems that currently exist on this line.

12 In short, I can summarize that the purpose and
13 the need for this project is to rebuild a
14 50-plus-year-old line, increase the capacity of the line
15 to better serve the customers of Santa Cruz County, and
16 I think, as the members of the Commission know, that
17 service reliability has been a concern for this
18 Commission in Santa Cruz County for some time. This
19 project is an important part of addressing that.

20 The application breaks the project down,
21 essentially, into four segments, and you may have heard
22 reference to segment numbers. Segment 1 is this upper
23 end that involves the new approximately four to five
24 miles of new transmission line needed to interconnect
25 the line with the Vail Substation. Beyond that

1 interconnection, all of Segment 1 is going to remain on
2 those existing steel monopoles, and no further changes
3 are required.

4 Segment 2 runs from Kantor south down to Canez.
5 We've heard a lot of discussion and much of the public
6 comment on the bosque area is all focused on this small
7 piece of Segment 2 just north of the Canez Substation.

8 Segment 3 covers the area from Canez south to
9 Sonoita Substation.

10 Segment 4 Sonoita south to Valencia in the City
11 of Nogales.

12 The original assumption and the focus of the
13 project from the outset was to rebuild this line where
14 it stands, rebuild it where it stands to minimize cost.
15 Rebuild it where it stands to minimize environmental
16 impact about charting new territory, new ground. So
17 other than, as I said, the four to five miles needed to
18 interconnect from the Nogales tap up to Vail, the
19 original premise was to build this line in place.

20 After survey work was performed and analyzed and
21 even after the public process for this process was
22 started, it was determined by the Company that it was
23 going to be necessary, at least in two areas, to move
24 outside of the existing alignment. It was largely
25 because of encroachment and construction that had

1 occurred within the right-of-way under the existing line
2 in these two areas. And those are in Segment 3,
3 essentially from Canez down south to Sonoita. There is
4 a fair amount of homes, sheds, buildings that were
5 constructed within the existing right-of-way alignment
6 that made it virtually impossible to rebuild the line in
7 place in that area. Homes were built up right next to
8 the line, as well as a small section along Grand Avenue
9 in the City of Nogales where gas stations and businesses
10 had developed and constructed right under the line. It
11 made it unsafe and virtually impossible to rebuild a
12 line in place in that area.

13 So with that information, the Company retrenched
14 and decided, okay, we are going to need alternative
15 routes at least in these areas. We are going to need to
16 expand our study area, expand our notification process,
17 and develop alternative routes for this project, moving
18 away from the assumption we will just build the line
19 where it stands, and that is what was done.

20 The study area, we heard a lot about the study
21 area. And what is a study area? Clark, can you pull up
22 a map of the study area, please?

23 I don't know if you can see that clearly. There
24 it is. This hatched area follows the project, and this
25 map was, indeed, used in a number of the newsletters.

1 This hatched area shows an area covered by one mile on
2 either side of the line. The blue dotted area is the
3 existing line running down, and up here you have the two
4 alternative routes that were proposed for
5 interconnecting with Vail.

6 So a study area can be a couple of things and is
7 a couple of things. One, it is the area in which
8 companies and consultants are going to look at and
9 analyze alternative routes. Here we have the existing
10 line. The analysis is, are there other and better ways
11 to build this line to cover the same ground that are
12 going to have less environmental impact? The study area
13 also can be, and in this case was, the area in which we
14 provided notice, newsletters, direct communication to
15 landowners and residents that UNS Electric is out here
16 building a project. We are going to rebuild this line.
17 We want you to know about it. We want your input. We
18 want your feedback.

19 And that is what was done. As I said, the
20 initial -- at the outset, there was a mailing of a
21 newsletter when the Company first conceived and believed
22 it was going to rebuild the line in place. Then the
23 study area grew to this area shown here, and this
24 remained over the course of the project. Notification
25 and the mailing list improved and changed, and we added

1 addresses, but the focus was always to get folks within
2 a mile on either side of the line, north and south,
3 notice of this project and an understanding of what was
4 going to occur. And that was done through these
5 newsletter mailings. The newsletters mailings notified
6 those residents, landowners of open houses where they
7 can show up and gain additional information and provide
8 their feedback on the alternative routes that were being
9 studied and analyzed within this study area. So that is
10 the public process that was used.

11 And I guess I want to touch on briefly, there
12 was some discussion about a contraction of the study
13 area and a smaller study area. Those are in reference
14 to another project. I know it is a project that is near
15 and dear to a lot of hearts, but that is the Rosemont
16 project. It is not this project. This study area
17 expanded. It grew.

18 And the idea that the Campana and the other
19 folks, when you saw that plat map of the residents in
20 the area of the bosque, they indeed got notice, and they
21 indeed got the newsletters, and they indeed attended the
22 open houses. In fact, the Campanas were very active in
23 the process and showed up to the meetings and, in many
24 ways, drove some of the route selection in their area by
25 expressing their views and opinions about what they

1 wanted to see.

2 Let me then talk about the hearings. The
3 hearings took place over five days. We had three days
4 of hearings in Rio Rico, and we had two days after the
5 hearings just south of Phoenix off of I-10.

6 COM. NEWMAN: I think you meant Tucson.

7 MR. DERSTINE: No, south of Phoenix. The
8 subsequent two days was just south of Phoenix, because
9 most of the members are generally from the northern
10 area, oftentimes, the practice is to hold the initial
11 set of hearings as close as they can to the project
12 site, and then, oftentimes, if it is adjourned, then the
13 Committee, th deciding committing hearings are often
14 moved to Phoenix. It is not all the times, but --

15 COM. NEWMAN: It just didn't make sense.

16 MR. DERSTINE: It was pushed as far south of
17 Phoenix as possible where we could find facilities to
18 accommodate the travelers, Ms. Webb and Mr. Magruder,
19 and that was done.

20 So, again, the hearings went five days. Three
21 hearings in Rio Rico and two days of hearings south of
22 Chandler. Ms. Webb, Mr. Magruder were granted
23 intervention. Presented argument, testimony, throughout
24 the course of the hearing, and made the arguments and
25 presented the evidence that they've raised in their

1 briefs. These are not new issues that are being
2 presented. These were fully vetted and voiced before
3 the Siting Committee, and the Committee, again, heard
4 their testimony, their evidence over those five days of
5 hearings.

6 In addition to the five days of hearings, there
7 was a route tour. I think it was on the second day of
8 hearings, notwithstanding some of the problems with
9 former route tours and the logistics of having a court
10 reporter ride along and set up her court reporting
11 machine in a parking lot to meet all the open meetings
12 requirements, we did indeed have a route tour. The
13 route tour started in Valencia, the City of Nogales at
14 the Valencia substation. We followed a number of the
15 alternatives and the existing line route to examine
16 those routes. It then moved up through the Sonoita
17 Substation. It had stops along the way, again looking
18 at alternative routes, looking at the encroachment that
19 was occurring in the Sonoita area. Then traveled up to
20 the Canez Substation, again looking at the alternative
21 routes along the way that were proposed in the
22 application. And we had a good, long stop there at the
23 Canez Substation and in the area of the bosque.

24 All of the members of the Siting Committee, I
25 think except for one, attended the route tour, and it

1 took most of the morning. I think it went past the noon
2 hour. So a considerable amount of time was spent by the
3 members of the Committee physically looking at the
4 conditions on the ground, looking at the routes, looking
5 at the bosque, examining the routes that were being
6 proposed.

7 At the end of the hearing, the Committee voted
8 10 to 0 to grant the application and rebuild the
9 existing 115kV line as a 138kV line and interconnect the
10 transmission line with the Vail Substation.

11 That CEC that was issued by the Committee adopts
12 the preferred routes that were presented by the Company
13 in its application for each segment, Segments 1, 2, 3,
14 and 4, including the preferred route in the area of the
15 bosque and imposes various conditions on the
16 construction of the project. There was a good afternoon
17 of deliberations by the members of the Committee over
18 the bosque area and the appropriate route for the area
19 of the bosque, taking into account concerns with the
20 flood district, as well as the considerable amount of
21 deliberations over the right of other conditions.

22 At the end, the Committee issued a Certificate
23 of Environmental Compatibility that you have before you,
24 and the Company has not filed any exceptions to that
25 CEC, but Mr. Magruder and Ms. Webb have. So let me

1 briefly address those.

2 As I read his papers, Mr. Magruder's exceptions
3 focus on two main issues. First is the alignment in the
4 bosque. The second is the time in which the landowners,
5 residents, and other interested parties may have to
6 object to the Company's pole finish plan. That is the
7 selection by the Company that will occur after you make
8 a final decision on the CEC as to what poles will be
9 Core 10. What pole also be steel galvanized.

10 Let me first talk about the bosque. I know it
11 is an issue near and dear, so let me talk about that
12 first.

13 Mr. Magruder in his exceptions proposes a
14 modified route in Segment 2. And, Clark, if you could
15 pull up that Segment 2. And the maps you are seeing
16 here on the screen are all part of the record in this
17 case. They were admitted, and there was extensive
18 testimony using these diagrams and maps.

19 The preferred route for Segment 2 follows the
20 existing alignment, top to bottom. But just north of
21 the Canez Substation makes a short jog west to the
22 railroad and then drops south following the railroad
23 right-of-way and the existing distribution line that
24 sits next to the railroad right-of-way before it drops
25 in to the Canez Substation. As I mentioned, that

1 preferred alignment, the adoption of that slight
2 modification and move away from the existing line in
3 Segment 2 came out of and was a product of public input
4 from residents and landowners, Avatar being one, the
5 Campanas being another, who supported moving the line
6 that has been on their property for years west so that
7 the line doesn't bisect their land but is moved to the
8 western edge.

9 And let me just talk about what the land is like
10 in that area. I mean, these folks in the area of the
11 bosque, Segment 2, the small little area, their property
12 is bounded by Pendleton Road on the east, the railroad
13 on the west. Over the railroad is the Santa Cruz River,
14 and running through bisecting their land is the 54-,
15 55-year-old 115kV line. Most of the people bought that
16 property with that line in existence. It remains there
17 today.

18 So the preferred route moves to the west just up
19 against the railroad right-of-way for a short piece at
20 the bottom of Segment 2 before it drops into Canez.
21 That is the route that the Siting Committee adopted.
22 That is the route that the Siting Committee determined
23 was the most environmentally compatible route, given all
24 of the concerns and differing opinions on what was best
25 for this area.

1 And I will mention -- mention has been made of
2 it, and I will concede that I think the Siting
3 Committee's decision was driven to some large extent by
4 the opinion and the position of the Santa Cruz Flood
5 Control District and the letter which was admitted as
6 Exhibit Number 25, in which the Flood Control District
7 manager in no uncertain terms expressed his opinion as a
8 Flood Control District manager that the line should not
9 be moved west of the railroad, that it did not make
10 sense to put this line, in this particular case, further
11 into the floodway or closer and closer in proximity to
12 the floodway and further out into the floodplain. Not
13 only was there risk associated with doing that, but it
14 had its own environmental impacts. And if you will look
15 at Exhibit Number 25, you can read his opinion for
16 yourself.

17 In arguing that the line should, nonetheless, be
18 moved west of the railroad, Mr. Magruder, I think, seems
19 to discount and minimize the position of the Santa Cruz
20 County Flood Control District, that the line should not
21 be built west of the railroad. And he seems to be
22 persuaded that it makes sense to incur the additional
23 cost of having to dig to further a depth, build larger
24 foundations to try to withstand the possibility of
25 floods in the future to accommodate this small area at

1 the bottom of Segment 2.

2 The Company's position is that it is in line
3 with the Flood Control District, that in this case, it
4 is not an appropriate choice. It is not an appropriate
5 planning decision. It doesn't make sense to put the one
6 line, the radial line that serves Santa Cruz County, in
7 jeopardy and the possibility of harms way by moving it
8 further out into the floodplain closer to the floodway
9 when there is no compelling reason to do so.

10 I think the Company's position is also that it
11 is happy to have the line stay where it is. The
12 existing alignment where the line sits today and has
13 been for 50 years is perfectly acceptable to the
14 Company. In fact, it will cost less to build it there.
15 Again, the move and the adjustment of the preferred
16 route to move the line west in this area of the bosque,
17 to follow the railroad was done to try and accommodate
18 the landowners in that area. And given the strong
19 opinion of the Flood Control District and now given the
20 position of the residents, I think maybe that if this
21 Commission thought that it was going to second-guess and
22 change the Certificate of Environmental Compatibility by
23 the Siting Committee that the appropriate choice is not
24 to move the line west of the railroad further into the
25 floodplain, but to, in fact, to leave the line where it

1 sits today, and, in fact, that is the opinion of the
2 Audubon Society that filed comments in the docket. That
3 was the opinion of the public comment you heard from Ms.
4 Sass today.

5 So at the end of the day, the Company will build
6 this line where you tell it to build it, but the
7 question before you is, Where is the right place? What
8 is the right choice to be made, as you mentioned
9 Commissioner Pierce. I think in this case it is either
10 the preferred route in the area of the bosque or it is
11 the existing alignment.

12 Let me turn now to Mr. Magruder's pole color
13 selection exception. Mr. Magruder argues there ought to
14 be additional time for landowners or residents to object
15 to the Company's pole finish plan. I think that having
16 read his exception, there is no strong objection to
17 that. It seems it is appropriate to have more time for
18 people who are impacted by this line, who live in close
19 proximity to it to object to a selection of Core 10 or
20 galvanized or galvanized over Core 10. I don't know
21 that there is a big impact to the Company or prejudice
22 to the Company in doing that, and I think we are open to
23 that change.

24 Let me now turn to Ms. Webb's exceptions.
25 Ms. Webb's papers raise a larger number of what she

1 characterizes as concerns, so let me focus on what I
2 read as her primary objections.

3 Ms. Webb's two areas of primary focus are in
4 what she characterizes as a lack of aggressive public
5 outreach to residents in the Vail area, I believe. I
6 don't know that she is asserting there is lack of
7 sufficient public outreach north to south on this
8 project, but, certainly, in the Vail area. I think that
9 is a fair reading of her position.

10 And she uses that as a jumping off point to
11 argue that this Committee should create a citizens
12 advisory council. She says to mirror or be similar in
13 nature to the Southeast Arizona Transmission Study
14 Group, to assure that companies are following the
15 directives of the Commission.

16 Let me address both issues and start with public
17 process. I outline for you the public process in this
18 case, and to respond to Commissioner Newman's question,
19 there is no statute that defines what public process
20 should be or that standardizes what public process
21 should occur. There are minimum notice requirements in
22 the citing statute, but the practice of UNS Electric,
23 Tucson Electric Power, and all the utilities in this
24 state goes for beyond that, and it is extensive. That
25 is not to say that we don't make mistakes and that we

1 couldn't always do a better job. I think you can always
2 look back at a case and the process that we used and
3 say, We should have done this different. You should
4 have sent notice to these folks who didn't get it. But
5 I would say that the attack and the assertion that there
6 was no effort on the part of the Company, a lack of
7 effort to put -- to create meaningful notification to
8 people who are within reasonable proximity of this line
9 is not supported by the record, and it just isn't so.

10 As I said, there were mailings, direct mailings
11 of newsletters. These three newsletters went out to
12 every landowner and resident, at least that we had a
13 good address for them on either side of this line. So
14 then the question is, How far do you want us to go? How
15 far do you want us to send out newsletters? How
16 expansive do you want the outreach? Should it go two
17 miles? Should it go five miles? Should it go ten
18 miles? There has been a lot of mention of the fact that
19 we referenced in our brief that Ms. Webb lives some
20 considerable distance from this project, and in fact,
21 the other members of the public who gave public comment
22 on the lack of outreach, the lack of meaningful public
23 outreach to the residents in Vail live outside of this
24 study area. I'm not aware of anyone that came forward
25 and said, I'm within your mile boundary and I didn't get

1 a notice. I'm not saying there wasn't anyone, but I'm
2 saying, we made -- the Company and its consultants made
3 good and reasonable efforts to get notice out to let
4 folks know about this project, to get them to show up at
5 open houses to tell us their thoughts on our route, on
6 our alternatives. And so this idea and the assertion
7 that the Company has turned a blind eye to the public
8 and we haven't learned from past cases and made no
9 credible effort to the public process just isn't so.

10 Let me then address the citizens advisory
11 council issue. I recognize and I understand that folks
12 not only in the Vail area but throughout the state want
13 to know about what is going on, and they want to have a
14 role. And the question is, how do you do that? There
15 are forums. There are planning groups on the local
16 level, as well as on the industry level. Tucson has the
17 Metropolitan Planning Commission. There is Pima
18 Association of Governments, which does infrastructure
19 and regional planning. Folks can get involved and be
20 involved, like Ms. Webb and Mr. Magruder, if they want
21 to take the time to do that. Further, there are
22 industry groups that are, as you well know, involved in
23 long-term planning, looking at issues of planning of
24 infrastructure, not only by utilities in Arizona, but
25 utilities in New Mexico and outside of the state that

1 are planned to lead here in Vail and in other areas.

2 So the question is, do you want to create, and
3 does it make sense to create, an ad hoc citizens
4 committee as a condition to this project? And I think
5 the answer is, from the Company's perspective, that it
6 doesn't make sense to do that. If you think there is a
7 need, if you think that there is a gap in the ability
8 for members of the public, people in Vail, not only in
9 Vail, but elsewhere, to have input, to understand what
10 is happening on the planning basis, then I think it
11 needs to be done on a comprehensive basis. It needs to
12 be done on the biannual transmission assessment. There
13 are formats and groups, larger groups, planning and city
14 groups where that might be appropriate. But to create a
15 small ad hoc citizens advisory council as a condition to
16 a project, in fact, the citizen advisory council is to
17 oversee Tucson Electric Power, which isn't even the
18 Applicant in this case. Put that issue aside. It is
19 not good planning. It is not an appropriate condition
20 for this project. It may be something that is important
21 and suitable for this Commission to undertake and to
22 study and to have staff look at, but as a condition to
23 building this project, it is not appropriate.

24 There were a few other points made in Ms. Webb's
25 exceptions. One, she pointed to the need for an

1 archeologist, given her concern over archeological sites
2 of significance. The fact is that under the existing
3 conditions, there must be a reconstruction archeological
4 survey which would identify sites. Those would be
5 marked, and, furthermore, the protocol is that an
6 archeologist would be on call if something was
7 unforeseen was uncovered during the course of
8 construction. I think what she is pushing for is
9 already there.

10 As to signs, she requested larger signs. She
11 points to the signs that were used in the CNA case. The
12 signs were entered using the larger format sign. There
13 are limitations on how large we can go on these
14 notification signs for construction facilities. Cities
15 and counties have ordinances on the size of signs that
16 can go on a right-of-way, but we have increased the size
17 of our signs.

18 So with that, let me close by simply saying
19 this, that the citing statute requires that you, the
20 members of this Commission, balance in the public
21 interest the need for adequate, economic, and reliable
22 supply of power with the desire to minimize the effect
23 on the environment and ecology of the state. The area
24 of project rebuilds an existing line, improves the
25 capacity, and over 90 percent of the project rebuilds

1 this line where it stands.

2 The project will improve service reliability in
3 Santa Cruz County. The project has minimal
4 environmental impacts, and with the record before you,
5 we ask that you affirm and approve the Certificate of
6 Environmental Compatibility issued by the Siting
7 Committee. Thank you.

8 CHMN. MAYES: I think what we will do is take
9 questions for each party before we move on to the next.

10 So let me ask you, Mr. Derstine, can you tell us
11 what in the record reflects the need for the line that
12 you cited that was specifically you talked about the
13 fact that increased capacity on the line will improve
14 reliability in the Nogales and Santa Cruz area. You
15 know, I'm painfully aware of those issues, having been
16 on the Commission for the last six years. But can you
17 be more specific? What does the record reflect with
18 regard to how many of those outages will be relieved or
19 mitigated as a result of this line? Can you just be
20 more specific on that for me?

21 MR. DERSTINE: Mr. Beck testified at some length
22 on the need for this project. He summarized the key
23 points of that. One, as I mentioned, you've got the
24 bottom half of this line sitting on wooden structures
25 that are over 50 years old. Those structures are at the

1 end of their life, and, certainly, there are some
2 number, although I don't know that there was any
3 documentation how many per season, but some outages are
4 due to the failure of the poles. They are not going to
5 continue to be reliable and continue to hold this line
6 in the future.

7 The capacity need is a real driver of this, in
8 that there is currently approximately a 50-megawatt
9 capacity limitation on this system due to the
10 constraints on WAPA. That forces UNS Electric to run
11 local generation down in the City of Nogales to meet
12 peak. Those peaker units are expensive. It drives
13 rates. Furthermore, there is environmental concerns
14 running the older generators in Nogales for an extended
15 period of time. That condition will only become more
16 dire with the growth in Santa Cruz County.

17 So going back to the reliability concerns that
18 have been longstanding, and the Company recognizes that,
19 one of the things that the Company was directed to do in
20 the reliability docket was to do this project, and we
21 are here before you to do it, and we are asking
22 authority to do it.

23 CHMN. MAYES: That is what I have recalled, but
24 you said that the Company -- correct me if I'm wrong,
25 but in your opening remarks, you said that the Company

1 would be copasetic with staying within the existing
2 corridor or on existing line corridor, in addition to
3 you also seemed to prefer the preferred route in the
4 bosque area, the Canez Substation area. Is that
5 correct? I mean, are you indifferent to the two
6 choices?

7 MR. DERSTINE: I would say that the Company,
8 having been through this process and having now seen how
9 public sentiment has changed in terms of this focus
10 point, the bosque area of Segment 2 and the residents
11 and the landowners and the environmental concerns that
12 have been raised, I would say that the preferred route
13 may not be the preferred route, that's correct. The
14 existing alignment may in fact be the preferred route of
15 the Company at this point, given lower cost. The line
16 stays where it has been for 50 years. You are not
17 moving the line west where, through the public comment,
18 there has been indication that more good stuff, the
19 environmental larger trees, et cetera, are further to
20 the west. The line sits further away from the railroad.
21 It also addresses the concerns of the Santa Cruz County
22 Flood Control District administrator who said his
23 preference was that the line remain where it is.

24 CHMN. MAYES: Why didn't the Company propose
25 that to begin with?

1 MR. DERSTINE: You know, as I mentioned, it was
2 a concession to the landowners in that area, candidly.
3 We understood and had feedback through our open houses
4 in our public process that some of those folks wished to
5 have the line moved further west. They didn't want the
6 line bisecting their property.

7 CHMN. MAYES: Even though there is already a
8 line?

9 THE WITNESS: Even though there is already a
10 line.

11 CHMN. MAYES: They didn't want a larger line?

12 THE WITNESS: It wouldn't even be larger. I
13 think the concern was, Look, right now I have this line
14 that runs down the middle of my property. If I move it
15 to the west, I don't have to see it as much. But
16 that -- candidly, that view is not shared by others.
17 And I think that, you know, through the hearing process,
18 and, again, this has been something of a case study for
19 us, in that, you know, despite our public outreach and
20 thinking we were doing the right thing and addressing
21 local residents' concerns, once we got closer to the
22 hearing and actually into the hearing, we really felt
23 the full brunt of people coming out of the woodwork.
24 They got the newsletters. Make no mistake, they got the
25 newsletters. They could have attended the open houses.

1 Maybe some did. We didn't get the strong opinion, Don't
2 move that line to the west, until we got into the
3 hearing.

4 Further, we didn't hear the strong opinions
5 about moving it west, so that was addressed during the
6 course of the hearing, and you have the exhibits and the
7 testimony before you and the problems with moving this
8 line over the railroad further out into the floodplain
9 of the Santa Cruz River.

10 CHMN. MAYES: And I guess -- and then, I will
11 give up the microphone, but the concern that I -- I just
12 want to try to drill down on this a little bit, because
13 I want to make sure, if the Commission did go in that
14 direction, i.e., keeping it in the same place, that
15 there hasn't been some expectation built up among those
16 original group of people that you are attempting to
17 placate that the thought that the line was going to be
18 moved west who would now be upset because the Commission
19 was going in the direction that the subsequent public
20 commenters came in and argued for. I mean, I'm trying
21 to get a sense, do you understand the question?

22 MR. DERSTINE: I understand. I think I
23 understand the question. And my answer is, I think, the
24 placating and the attempts to placate really pretty much
25 went out the window during the course of the hearing.

1 Folks laid it down in terms of what they wanted. You
2 heard their opinions and their positions. I think they
3 made a clear record, at least through public comment,
4 not through testimony and intervention, but certainly
5 through public comment, about what they want and what
6 their desires are and what the concerns are. So there
7 haven't been certainly any off-record discussions that
8 said, Support us on this, and we will never move the
9 line or keep the line where it is. That just hasn't
10 happened.

11 The preferred alignment, as I said, came out of
12 the public process. We now got strong pushback on that
13 alignment. Then, there are a concerted group that now
14 says, Get it off the railroad. Get it off our property
15 entirely. We are tired of looking at it. For obvious
16 reasons, the reasons we stated, we don't think that is a
17 good idea. We don't think that is wise. So I think, as
18 an alternative choice, keeping the line where it sits
19 today and has for 50 years is an appropriate choice.

20 CHMN. MAYES: Okay. I will certainly have that
21 question for Mr. Magruder and Ms. Webb later today.

22 But Commissioner Newman, did you have a couple
23 questions.

24 COM. NEWMAN: If I may.

25 CHMN. MAYES: Sure.

1 COM. NEWMAN: You asked some of the questions I
2 was going to ask, but I have a couple more. First of
3 all, just by way of background, historical background --
4 well, first of all, I have to make a statement. There
5 is no doubt in my mind that Santa Cruz County needs a
6 more reliable and a better line. As I say, for many
7 years, I was the state legislature down there and was on
8 the corporation commission, but I spent a lot of time in
9 Tubac area Rio Rico area. I know exactly what the
10 problems are, so I support the Company in trying to find
11 the best way of doing that and probably the cheapest way
12 of doing that, because, ultimately, the ratepayers are
13 going to have to pay for this, and that will be very
14 tough on them, on you as the Company, and the
15 Commissioners to pass off the cost of this.

16 But by way of history, just a little bit, and
17 the other -- there was a large controversy of TEP
18 putting in another line from the BLM lands and the
19 Congressman's Office was involved with that, and there
20 was a whole history there that I think it is relevant to
21 this proceeding. And as a matter of context, do you
22 care to just go through some of that history in like
23 three minutes, a five-year history in three minutes?

24 CHMN. MAYES: That is three hours.

25 COM. NEWMAN: I think it is potentially

1 important.

2 MR. DERSTINE: I don't think I can do justice to
3 it in three minutes, but I will give you my
4 understanding of it. There was a case, Case 111, in
5 which there was a Certificate of Environmental
6 Compatibility issued for a 345 kV line that ran south
7 and was going to interconnect with the Valencia
8 Substation in Nogales. That project has never been
9 built. It continues to fight its way and encounter
10 problems with gaining the necessary approval from the
11 Forest Service, as well as the Department of Energy and
12 the various mechanisms that are in place to try to gain
13 and get approval for a project like this. And so that
14 project has not been built, but certainly, we were
15 sensitive to the fact that folks may see this as that
16 project or related to that project, and, in fact, one or
17 more of the newsletters made it clear that this is not
18 the Gateway project. This is not the 345 kV line that
19 garnered much opposition in Santa Cruz County and
20 elsewhere.

21 And so we've tried to make it clear to the
22 public that this project seeks to rebuild and improve
23 existing service in Santa Cruz County. This isn't that.

24 COM. NEWMAN: And there still -- that project is
25 not off the drawing board totally? It is still

1 potentially on your drawing board, or have you guys
2 stepped away from that significantly?

3 MR. DERSTINE: I think what I can say is it
4 continues to ride the docket, in terms of that case was,
5 at some point in time, reopened by this Commission, the
6 siting case was reopened. It remains reopened. It
7 remains on the Siting Committee's docket but hasn't
8 moved from there.

9 COM. NEWMAN: Okay.

10 MR. DERSTINE: So I think the Company continues
11 to look at it as a potential project, as a means for
12 addressing some of the transmission needs within
13 Arizona, but, again, we've continued to have problems in
14 getting the route that was selected by the Siting
15 Committee approved by the Forest Service and the Federal
16 Agency.

17 COM. NEWMAN: I had to ask those questions
18 contextually, even though it hasn't been brought up. To
19 me, it is relevant, very relevant to providing reliable
20 service to the community as a separate project.

21 The -- now, I have reviewed the letter from
22 Mr. Hayes from the Santa Cruz -- I've reviewed the
23 letter.

24 CHMN. MAYES: I think we are getting feedback on
25 the line.

1 COM. NEWMAN: I've reviewed the letter from
2 Mr. Hayes from the Santa Cruz County Flood Control. To
3 me, that is critical to whatever decision you come to
4 today or, perhaps, in two weeks, because I actually
5 think that this letter needs some more -- I need to
6 figure out more about what this letter means or what
7 doesn't it mean from an economic sort of cross benefit
8 perspective, and that is something that I haven't been
9 able to ask about, yet, so I might as well ask it.

10 The very, very important part of the letter
11 down -- I'm referring to Santa Cruz Floodplain
12 Administration letter sent by Mr. Hayes August 10th,
13 2009. It was actually addressed to Mr. and Mrs.
14 Campana, and in the next to last paragraph, around the
15 middle of the paragraph, it says, The district agrees
16 that it is possible should TEP/UniSource be willing to
17 expend the necessary funds to construct the power line
18 closer to the railroad in such a manner as to reduce the
19 possibility of damage. However -- then, the next
20 sentence, However, it explains how you are exempt. They
21 have no power over you. You could put the line there.

22 What I think it suggests is, and what I really
23 want to know as to this amendment, if we should have an
24 amendment with regard to this area, it can be done. You
25 can do it. They are saying maybe you shouldn't do it.

1 This will flood. We heard not by way of testimony, but
2 by way of -- I don't know whether staff told me or
3 somebody else told me, it was mentioned that Pima County
4 and other places have transmission lines in floodplains,
5 and I imagine that is true.

6 So my question, I don't see it here, and
7 unfortunately, I don't think our engineering department,
8 while it actively participates in most line siting
9 cases, I don't think for staff -- for staffing reasons,
10 it participated in this case, believe it or not, yet.
11 So I want to know, how much money is that going to cost
12 you? I mean, he doesn't say you can't do it. He just
13 implies that it will cost you money. And so if we can
14 protect the bosque area, even though you weren't
15 planning on doing it, how much money will that cost the
16 rest of the ratepayers? I think that is a really
17 important question that needs to be answered.

18 MR. DERSTINE: Well --

19 COM. NEWMAN: I don't do cross-examination. I
20 don't do direct examination. I try to figure out the
21 truth.

22 MR. DERSTINE: Right. There were a couple parts
23 to your question, so let me try to address all of them.
24 The cost, as I understand it, is in excess of
25 \$1 million, approximately \$1.3 million.

1 Now, the engineering has not been fully done to
2 try to determine how deep they will need to develop -- I
3 guess, drill down in order to set the lines there,
4 but -- and I had the same conversation with Mr. Beck,
5 who testified for the Company, the Siting Committee,
6 that the differential between the preferred route and
7 moving the line west of the railroad is just over \$1
8 million.

9 COM. NEWMAN: You --

10 MR. DERSTINE: I thought it was important to
11 clarify for you, you read from and are making reference
12 to an August 10, 2009, letter from John Hayes to Mr. Ron
13 Campana. That letter came after the close of the
14 hearing.

15 COM. NEWMAN: Oh.

16 MR. DERSTINE: That was not admitted into
17 evidence and is not part of the record, but I think what
18 is indicated in Mr. Magruder's brief, after the close of
19 the hearing, either the Campanas on their own or with
20 Mr. Magruder, went back to the flood control manager
21 Mr. Hayes, and said, Your analysis was based on moving
22 the line over a long segment west of the railroad. What
23 do you think about this? What do you think about what
24 Mr. Magruder is arguing for today, that is, a small
25 segment in the limited area of the bosque, moving the

1 line west of the railroad? This letter, the August 10,
2 2009, letter addresses and confirms that subsequent
3 meeting that occurred after the Siting Committee
4 hearings had concluded. The letter that was taken into
5 evidence is the letter dated July 8th, 2009, Exhibit
6 Number 25. That was taken into consideration by the
7 Siting Committee as part of the deliberations, but I
8 think, as Ms. Campana characterized in her public
9 comment, the second letter could be read and be stronger
10 than the first. That is, the Flood Control District
11 manager does not change his position based on having
12 six, eight, or nine poles as opposed to a longer segment
13 of line, move it west of the railroad. He maintains
14 that it is not a good idea and opposes moving the line
15 west of the railroad over any segment.

16 But you are certainly correct that and it has
17 been no secret and Mr. Beck testified at length and was
18 cross-examined at length by Mr. Magruder, We can build
19 it there. If you want us to build it there, we can
20 build it there. It will cost an additional amount of
21 money, which the ratepayers must pay. Again, these are
22 estimates of what the cost increase will be, but it will
23 be in the magnitude of \$1 million. The question for you
24 and the question for the Siting Committee is, should
25 you? Should you move this line over the railroad

1 further into the floodway -- floodplain, closer to the
2 floodway? Does that make sense under the facts of this
3 case? Is that appropriate? And the position of the
4 Company, the position of the Flood Control District
5 manager is, no.

6 COM. NEWMAN: Well, that is why -- and this is
7 going to be it for me. This is the crux of, I think,
8 this debate today. I don't know if we are going to
9 resolve it. I'm just trying to understand it.

10 MR. DERSTINE: I hope I answered your question.

11 COM. NEWMAN: You did answer my question very
12 well, and that is part of the issue. The question, it
13 is a cost-benefit question. It is an analogy question
14 in terms of is it worth \$1 million to spend to protect
15 some area that has been identified as by the neighbors
16 who have walked it, and not that the Siting Committee
17 hasn't been there, but understanding a little bit better
18 whether \$1 million expenditure is worth protecting this
19 heavy bosque area that is the site for hawk activity.
20 And I don't know what else activity is in the -- close
21 to the river.

22 And I want to say something else about putting
23 all this into context from a public servant point of
24 view, which is sort of what I am, and this is going to
25 be a comment, and I will stop. You know, I think

1 since -- I've seen stats -- since 1890, or something
2 like that, or 1880 when a lot of European settlers came
3 to Arizona, the Arizona territory back then, that we've
4 lost around 80 percent of our riparian area. You know,
5 not that putting this line will make us lose that area,
6 but whatever activity has occurred along this river, and
7 all these things we have, this is one of the areas where
8 it is riparian, some very special area. It is not
9 protected like the San Pedro River is by a conservation
10 area, so it is up to public servants like me to have to
11 stick my neck out there and say, well, what is important
12 to protect? And this riparian area. And what I was
13 going to say, since 1880, something like 85 percent of
14 the riparian area is gone. So the question -- so it is
15 a cost-benefit question that should be reviewed in that
16 prism, I believe.

17 With that, I will stop my questioning for right
18 now.

19 MR. DERSTINE: I don't want to belabor the point
20 to your comment. I will point you, again, to Exhibit
21 Number 25. That was part of the record in this case,
22 and in Mr. Hayes' letter, July 8th letter, he points to
23 the fact of placement of the line west of the railroad
24 tracks would also damage whatever riparian habitat
25 remains or is reestablishing itself on the west side of

1 the tracks between the river and the tracks.

2 COM. NEWMAN: I did mention that. I would like
3 to know what that is. It is not an easy question.

4 MR. DERSTINE: I understand.

5 COM. NEWMAN: I guess I have one legal
6 procedural question, if I may. With regard to this
7 August 10th letter and things being in the record and
8 things not being in the record, and I'm making reference
9 to this August 10th letter, which is, obviously,
10 relevant to this decision, I'm going to ask counsel, it
11 is not as if I should act like this August 10th letter
12 doesn't exist, do I?

13 MS. WAGNER: Madam Chair, Commissioner Newman,
14 line siting cases are -- they present an interesting
15 procedural mix before the Commission. First of all,
16 line siting is a uniquely statutory procedure, in that
17 the line siting statutes don't apply to public service
18 corporations, per se. They apply to applicants who seek
19 to construct transmission lines or power plants, so that
20 in some ways, you have before you in a siting case an
21 applicant who is not a public service corporation, for
22 example, SRP. And I raise that example to point out the
23 jurisdictional difference between a siting case, which
24 is really a statutory creation of a procedure for
25 handling these matters, and the kind of cases that you

1 see more generally where you regulate public service
2 corporations and where the Commissions' constitutional
3 authority comes to play, I think in a more prevalent way
4 than it does in a siting case. That is the first piece
5 of it.

6 So to a certain degree, when we are dealing with
7 a siting case, we are looking at a more narrow section
8 of the statutes than we commonly do with cases before
9 the Commission, and the siting statutes do set forth
10 pretty clearly that your review in this matter is on the
11 record, meaning the record before the Committee. So you
12 have to balance that on one hand, that statutory scheme
13 and that particular statutory directive with, on the
14 other hand, the way the Commission, again by statute, is
15 required to conduct its business, and that is in an open
16 meeting session, where your deliberations are then
17 public, where there are provisions that provide for
18 public comment. And I think, too, it is important, just
19 as a practical matter, to recognize that the siting
20 decisions are a matter that is vitally important to the
21 public. It is uniquely appropriate that they have an
22 opportunity to comment.

23 So having said that, your question is: Can I
24 consider this letter? And the answer is, you can
25 consider it in the nature of public comment, which was

1 the manner in which it was offered to you this morning
2 by Mr. and Mrs. Campana. It is not, however, evidence
3 that was in the record. And if you were to wish to
4 offer some sort of amendment on this or any other issue,
5 it is important that you base those decisions on
6 evidence that was in the record. This doesn't mean that
7 you can't hear public comment. It doesn't mean that as
8 a decisionmaker, you can't be aware of the public
9 comment, but it is important to be aware that the review
10 specifically by statute is directed to be a review on
11 the record.

12 So I hope that was helpful. Let me say, it
13 is -- it is difficult to come to really precise answers
14 to your question, because I think it is so important
15 that you be able to consider public comment. See, the
16 easy answer would be, just don't hear it. Just don't
17 consider it. I don't think that is really consistent
18 with the open meeting format in which you are required
19 to deliberate. I don't really think that is consistent
20 with the spirit behind the siting statutes, but you have
21 to balance that with the direction in the statute
22 that the -- that your consideration of the line siting
23 CEC is based on the record developed before that
24 Committee.

25 COM. NEWMAN: Another legal question on

1 procedure, and I just want to make sure, I'm dotting my
2 I's and crossing my T's. Has anyone that has been a
3 commissioner since statehood ever asked, or since the
4 line siting statutes has been in place, actually, have
5 they ever asked the question, shouldn't there be an
6 exception for like newly discovered evidence after the
7 record of the Siting Committee has been closed?

8 MS. WAGNER: Madam Chair, Commissioner Newman, I
9 haven't been here since statehood, so I can't answer
10 from between 1914, I believe it was, and 1990. To the
11 best of my knowledge, I've never encountered the
12 question on what we do with newly discovered evidence,
13 in other words, whether there would be any procedure in
14 which the Commission could open up a record and actually
15 entertain evidence. I've never had that question
16 before, and, frankly, I wouldn't want to give you an
17 answer here in a public setting. That may well be a
18 question more appropriate for a similar attorney/client
19 setting. We've just not had -- we have not ever had the
20 occasion where we've had to come square up against that.

21 Very often, you know, as in this case, I think
22 Mr. Derstine made a good point that the letter itself is
23 of a date that is after the hearing. It doesn't appear
24 to me, at least from the portions of the record I've
25 read and the briefs that I've read, what is contained in

1 the letter, doesn't appear at all to be inconsistent
2 with the evidentiary record at the hearing, and I think
3 you might want to give the other parties an opportunity
4 to comment on that. But that is what is commonly the
5 case, and that is because of the time frame on these
6 after the CEC is entered. There is a pretty brisk time
7 frame in which the Commission is required to act in this
8 case. Again, I think we talked about it this morning.
9 You are required to act by September 28th. The hearing
10 in this matter concluded on, you know, July 9th or so.
11 So that would tend to minimize some of those instances.
12 Then, too, you have the whole issue of, you know, is it
13 truly newly discovered evidence, or is it evidence that
14 simply wasn't introduced but could have been introduced?
15 In other words, did a party make a tactical decision not
16 to introduce it, of which they thought better of later
17 on? So there is a -- I think there is a spectrum of
18 issues that goes with your question. But, again, to the
19 best of my knowledge, we have never had an issue of
20 truly newly discovered evidence, in other words,
21 evidence not available at the time of the hearing, to
22 force us into a position of figuring out whether there
23 is some way for the Commission to take new evidence or
24 whether the only alternative is, you know, some sort of
25 denial, and it doesn't appear to me that we are in that

1 situation here, fortunately.

2 COM. NEWMAN: I was suggesting to you that the
3 August 10th letter, and I want to note this for the
4 record, suggests a different remedy, suggests a
5 different alternative remedy that perhaps wasn't
6 considered before by the Line Siting Commission, and if
7 that is the case, I heard some very wise people
8 whispering, but another possible remedy is if this is
9 the case, that this whole -- I wouldn't want to risk the
10 Company's ability to get the reliable power down to town
11 just for this one bosque issue. But if we feel by
12 regarding the Commission that this bosque issue is
13 important enough, another remedy would be to shift it
14 back to the Line Siting Commission for further study on
15 the bosque issue, do a bit of a cost-benefit study, have
16 engineering staff involved, which in this case, again, I
17 want to state for the record, our engineering staff is
18 not actively involved with the line siting case on this
19 particular case. This engineering issue is not studied,
20 and in that sense, it is newly found evidence that might
21 provide a better forum for the Line Siting Committee.

22 MS. WAGNER: Madam Chair, Commissioner Newman,
23 again, the line siting statutes are a very peculiar
24 group of statutes, and they do not provide for a remand,
25 so that is not --

1 COM. NEWMAN: That very wise channel was wrong.

2 MS. WAGNER: Unfortunately, that is not an
3 option before you.

4 COM. NEWMAN: That is unfortunate. Thank you so
5 much and --

6 CHMN. MAYES: Okay. And we are still working
7 our way through this, but I do -- looking at the
8 evidence in the record, I believe we can make a decision
9 on this power line. I think it is important to remember
10 that this power line, we essentially asked the Company
11 to build for reliability reasons. So it is something
12 the Commission asked the Company to do because we had so
13 many reliability issues in the area, and I think it
14 would be strange for us to delay if we can resolve some
15 of these environmental issues in this case, and I think
16 we can.

17 Let me ask just a couple more questions, and
18 then we will move on. Commissioner Newman -- in
19 response to Commissioner Newman's question, you said
20 that moving the line -- I think you said, Mr. Derstine,
21 moving the line west would cause an increase in cost of
22 \$1.3 million or \$1 million? That is associated with
23 moving the line west, akin to what Mr. Magruder has
24 suggested in his briefs; is that correct?

25 MR. DERSTINE: Chairman Mayes, Mr. Beck

1 testified extensively on costs. That testimony is in
2 the record. I believe, and in caucusing with him, that,
3 again, the magnitude of the difference between the
4 preferred route and moving the line west of the railroad
5 has been suggested and described in Mr. Magruder's brief
6 is in the magnitude of \$1.3, \$1.4 million.

7 CHMN. MAYES: Okay. Is there any additional
8 costs associated with rebuilding the line in its current
9 location?

10 MR. DERSTINE: Well, I think that if the cost
11 comparison is between moving the line west of the
12 railroad and keeping it in the existing alignment, I
13 think the cost differential is even greater. That is,
14 that it is cheaper to rebuild it where it stands. It is
15 a bit more expensive to build the preferred alignment as
16 opposed to the existing alignment, and it becomes,
17 again, even more expensive to move the line west of the
18 railroad.

19 So the lowest cost option, rebuild it where it
20 stands, the existing alignment.

21 CHMN. MAYES: That is what I was asking. I was
22 confused. I thought you were saying it was even more
23 expensive to rebuild it in place.

24 MR. DERSTINE: No.

25 CHMN. MAYES: And then, one of the individuals

1 who provided public comment this morning suggested that,
2 or told the Commission that the Company did not put, I
3 think it was, the Vail Preservation Society on its
4 mailing list and stakeholder list. Why is that? Can
5 you provide an answer to the Commission?

6 MR. DERSTINE: I can't. If there was indeed an
7 e-mail to the Company that said, put the Vail
8 Preservation Society on all future cases, and we didn't
9 do that, then that is a mistake.

10 CHMN. MAYES: Do you have an e-mail list? Would
11 it make sense to put Ms. Webb and all these folks who
12 are clearly very interested in your power line and
13 substation cases on your e-mail list?

14 MR. DERSTINE: Given Ms. Webb was the Company
15 director of the Preservation Society, I think at the
16 time this case started and attended open houses, I think
17 through her, the Preservation Society had some knowledge
18 and understanding of this project. But we did not, as I
19 understand it, send separate notice, did not send
20 newsletters to the Vail Preservation Society. Further,
21 during the course of the hearings, Ms. Webb raised that
22 there are registered neighborhood organizations that
23 should receive notice. We've taken note of that. We
24 are going to -- for future projects, we've made a list
25 of those, and I think in her exceptions, she has listed

1 some additional groups or organizations, including her
2 own community association, Hilton Road Home Association.
3 I'm not sure of the exact name, and, again, as I said,
4 we are not perfect in this process. We are going to
5 strive to do better. Obviously, if the Preservation
6 Society director sent us a direct e-mail, Make sure we
7 are on the list of all future projects, and we didn't do
8 it, we made a mistake.

9 CHMN. MAYES: Do you agree with me that you need
10 to put those folks on your e-mail list?

11 MR. DERSTINE: Absolutely.

12 CHMN. MAYES: Do you commit to doing that?

13 MR. DERSTINE: Yes.

14 CHMN. MAYES: You had said in your brief that
15 you believe the idea of an advisory council is
16 unnecessary because groups can become involved in
17 organizations like SATS, the Southeast Area Transmission
18 Committee, and then, I think in your oral argument, you
19 stated that they can become involved in TAG and the BTA
20 process. I agree with you that there are multiple plans
21 for us out there. I'm not sure I agree with you it is
22 relatively easy for the layperson to get involved in
23 SATS. I mean, I'm the chairman of the Arizona
24 Corporation Commission, and I don't even know when they
25 meet. That is a group of very righteous commission

1 engineers, and you are suggesting these folks get
2 involved in that group when I don't even know when they
3 meet? I mean, I know what they are, and I think they
4 have an important group, but really, Mr. Derstine.

5 MR. DERSTINE: My point was, and if I said it
6 was open to everyone and everyone should show up and
7 hang out with these folks --

8 CHMN. MAYES: Would they let them in the door?
9 Would they let me in the door?

10 MR. DERSTINE: I don't think they would let you
11 in the door.

12 CHMN. MAYES: Maybe not.

13 COM. PIERCE: That would be personal.

14 MR. DERSTINE: If my comment was taken that
15 everyone can and should be involved, like Mr. Magruder
16 and Ms. Webb, I don't think that is open to everyone. I
17 don't think it is reasonable for the folks that you
18 heard about give public comment to be actively involved
19 with SATS or the BTA. I don't think that is realistic.

20 And my comment was, and my suggestion is, there
21 may very well be a need for a forum for a citizens
22 organization that is part of the overall planning
23 process. My point is that it doesn't make sense to do
24 that on an ad hoc basis as a tack-on condition to this
25 project.

1 CHMN. MAYES: And finally, if you could turn to
2 the decision, the Line Siting Committee's decision
3 itself, attached to the CEC, and perhaps I'm just not
4 remembering well, on Page 14, Exhibit B are several
5 pages of conservation measures, which I don't recall
6 seeing before or -- and I'm not sure if they are new to
7 the Line Siting Committee.

8 Can you tell the Commission how this came about,
9 how these were -- each of these conservation measures,
10 which I don't necessarily disagree with. They may very
11 well be necessary and something that we want to pursue
12 in the future, but how did they all come about? There
13 is very specific requirements on the utility. For
14 instance, for the Western Yellow Billed Cuckoo, the Pima
15 Pineapple Cactus, Southwestern Willowfly Catcher. I've
16 heard of that one before. The Lesser Long Nosed Bat and
17 Mexican Long Tongued Bat. Very colorful little critters
18 and very important biologically, but is this new?

19 MR. DERSTINE: This Exhibit B that is attached
20 to the CEC that was issued by the Siting Committee is
21 Exhibit B to the Company's application.

22 CHMN. MAYES: Okay.

23 MR. DERSTINE: The reason it was incorporated
24 and attached as a separate exhibit to the CEC was, I
25 believe a concern expressed by Chairman Foreman and

1 maybe other members of the Siting Committee that the CEC
2 should be a standalone document, and while I think it
3 has been the practice, and may in other cases, or up
4 until now has been the practice to reference the
5 application and environmental mitigation requirements
6 contained in the application reference to them in the
7 CEC without calling them out explicitly. The thought
8 was it makes sense to actually append them, that anyone
9 that goes to this CEC can read them. So the Company
10 thought that was a fine idea, and that is what was done
11 in this case.

12 CHMN. MAYES: Okay. I do, too, and I just -- so
13 it is sort of a new development in the Line Siting
14 Committee?

15 MR. DERSTINE: I believe so.

16 CHMN. MAYES: And then -- but these were all
17 measures that -- mitigation measures that were proposed
18 by the Applicant and agreed to by the Committee, as well
19 as the other parties?

20 MR. DERSTINE: What is identified as Exhibit B
21 to the CEC was Exhibit C to the application. Those were
22 environmental mitigation measures, conservation measures
23 that were developed by the environmental consultants for
24 the Company in preparing the application based upon
25 their study work and analysis of the study area for the

1 project, as I understand it.

2 CHMN. MAYES: And what level of attention did
3 these measures get at the Line Siting Committee?

4 MR. DERSTINE: Well, I think there was enough
5 concern about them to focus on them. There was -- as I
6 said, there were hours of deliberations over various
7 conditions. These and the environmental conditions got
8 a fair amount of attention from the Siting Committee,
9 and they ultimately adopted this -- incorporating and
10 setting forth the Exhibit C from the application and
11 actually attaching it to the CEC. So I think there is a
12 heightened and significant awareness of the unique
13 environment in the bosque, as well as the other areas of
14 the project, and that was one of the drivers for
15 attaching this Exhibit B to the CEC.

16 CHMN. MAYES: Were each of the conservation
17 measures discussed individually?

18 MR. DERSTINE: I don't believe so.

19 CHMN. MAYES: All right. Commissioner Newman?

20 COM. NEWMAN: In order to put that cost-benefit
21 analysis that I speculated in my head, if I should have
22 an amendment on this case, is stated that might cost
23 between \$1 and \$1.4 million. It is a hazy number.
24 Let's say it is \$1 million. What is the total project
25 cost?

1 MR. DERSTINE: If you will give me a minute, we
2 will dig it up.

3 COM. NEWMAN: I guess it is a tough number to
4 come up.

5 MR. DERSTINE: Well, there were preliminary cost
6 numbers that were set forth in the application itself.
7 Then, during the course of the hearing, they drilled
8 down on those cost numbers, and there was extensive
9 testimony by Mr. Beck and testimony from -- we are going
10 to the transcript, so I can give you those numbers.

11 While we are doing that, I will simply point
12 out, again, the number that we have, and I understand
13 the testimony supports, that the difference between the
14 preferred route and looking at moving the alignment west
15 of the railroad is \$1.4 million, and further, that in
16 your cost-benefit analysis, it is important to take into
17 account, and there was testimony, and it would be
18 important to review the record on the cost of outages,
19 the cost of flood impact. So there are a variety of
20 costs that need to be taken into account, not
21 necessarily dollars.

22 COM. NEWMAN: I agree with that. The potential
23 huge flood and have your line in the flood line is
24 something that is pregnant with meaning and needs to be
25 studied and -- but I just -- I will let Ms. Mayes

1 continue her questioning while you are -- while your
2 staff comes up with a hard number, because I wanted to
3 put \$1 million in perspective. To be honest with you, I
4 just don't remember what the total project cost was.
5 Obviously people involved in the project --

6 MR. DERSTINE: I want to make sure we give you
7 the right number.

8 CHMN. MAYES: And I think I'm done with my
9 questions, so do we -- why don't we do this, we will
10 come back to Mr. Derstine after we go to the next
11 intervener. I will give you time to look that up, if
12 that is okay with my colleague.

13 And Staff has not intervened in this case, so we
14 are going to skip Staff and then go to Mr. Magruder.
15 Would you like to go next?

16 MR. MAGRUDER: Good morning Commissioner's,
17 Staff, parties, and others present. Before I go through
18 my formal comments, I would like to give some -- answer
19 some of the questions that just came up. The
20 application says \$25 to \$47 million, and we never got,
21 to the best of my knowledge, a good cost during the
22 entire hearing. That is why they are having a lot of
23 trouble trying to look it up.

24 Next subject, you mentioned Case 111, the 345
25 line. It was supposed to be installed by 31 December,

1 2003, and the Company -- if the Company did not install
2 it by December 31st, 2003, they were going to have an
3 alternative installed by that date. They didn't make
4 it, and now they are on indefinite hold. I personally
5 think that that CEC should be canceled, and it should
6 come in with a new contract, new concept, and in
7 particular, in the 10-year transmission plan for UNS
8 Electric, they have proposed using the already
9 authorized Gateway substation in northwest Nogales to go
10 up there and then continue up through the national
11 forest where they have an easement called the Central
12 Route and then continue, they have right now, through
13 the Sonoita Substation. Personally, I have told them to
14 talk to Mr. Beck and said go north to the Canez
15 Substation. What that gives us is a big loop, and each
16 one of the three substations in the southern part of
17 Santa Cruz County will have two ways of getting power.
18 There will only be one section between Amado and Canez,
19 between Amado and Canez, so it will be a single circle.
20 Because north of Amado or the Kantor Substation, you
21 have the -- you will have the present 138 and you have
22 the 22 megawatts available on the 46 kilovolt line. So
23 you end up with a second circuit requirement of ACC
24 order 62011.

25 I also have attended the BTA meetings, so the

1 public can attend those meeting, and I've been there.

2 Now to my planned comments. Your secretary has
3 a folder for each one of you that she will hand out and
4 a folder also for Ms. Kennedy. Copies of this also have
5 been given to Staff and to the Applicant and to the
6 other party here. The reason yours is so thick is I
7 included a copy of my brief, which the other parties all
8 have.

9 I'm Marshall Magruder. I'm a resident of Tubac,
10 Arizona, and a UNS Electric ratepayer and also -- which
11 is the Applicant in this case. I'm very pleased that
12 you've come to southern Arizona, and because of the
13 importance of this proposal to the citizens of Santa
14 Cruz County and to hear the issues for these most
15 impacted by the decision. I'm very happy and very proud
16 of the degree of professionalism and thoroughness
17 exhibited by the Line Siting Committee and its chairman
18 in this case. Seeing this committee in action is a
19 demonstration of how our state should do things right.

20 I plan to cover some background information as
21 to why I intervened, a chronology of events, I will call
22 them three phases in this particular line siting case,
23 which will explain many of the disconnects that have
24 already occurred so far today.

25 And then I will discuss my two exceptions.

1 Apparently, I might only have to discuss the second one
2 a short period of time, that I filed in my request for
3 review in this case.

4 Background as to why I intervened. First, since
5 the Commission staff did not intervene, I felt like
6 someone has to question areas of concern and someone has
7 to represent the local community, and unfortunately, I
8 stepped up again to do that job. Without the staff and
9 if Ms. Webb hadn't intervened, this would have been a
10 two-hour case, and it would have not been as nearly as
11 productive. I had second -- six more reasons why I
12 intervened, and mainly, they were to answer questions
13 that arose as a result of this particular project.

14 Second, I was worried about the impact of
15 changing to the WAPA source of electricity to TEP
16 sources of electricity, since in an earlier hearing, the
17 wheeling costs appear to be at least \$5 per month per
18 residential customer forever, and that is a lot of
19 money, and it is effectively a rate case.

20 Third, I was appalled to learn that the
21 10-year-old \$2.1 million three-way ring breaker at the
22 WAPA substation is being abandoned. So we've spent
23 \$210,000 a year for something, and we are just leaving
24 it. That is -- and then they are not going to use it.
25 They may sell it as spare parts, but it is money that

1 I've spent.

2 COM. NEWMAN: How much is that? \$2.1 million,
3 so they are abandoning it.

4 Third, I still find it dumbfounded that UNS
5 Electric cannot obtain more than -- and I made a typo
6 here. It should be 50.9 megawatts on the existing
7 115-kilovolt line, especially since the Energy Policy
8 Act -- and I made another typo. It should be Section
9 1222 specifically directed WAPA to upgrade its
10 transmission system in this area, including giving them
11 half a billion dollars. I don't understand WAPA. I
12 don't manage WAPA, but the law is there for them to fix
13 their problem.

14 Fifth, by changing power from APS, which is our
15 old source, which normally was natural gas, to
16 coal-fired TEP power, future caps that might be impinged
17 upon coal-produced power compared to other sources of
18 power will increase our rates, so I was worried about
19 that.

20 Sixth, I'm worried about the addition of the 75
21 to 100 megawatts of demand added to the already
22 deficient Tucson sink. That will exacerbate costs in
23 the summer, because they have to buy more power on the
24 open market. Tucson is already deficient, and it has a
25 problem, so this just makes it worse.

1 Seventh, I was concerned that the existing route
2 that crossed through three shopping centers over the
3 grounds of the county building complex, when compared to
4 a route that skirted the boundary of an industrial area
5 at the bottom of a steep hill would be better. We spent
6 a long time on those last six items in these hearings,
7 and eventually we got answers to them all, but it wasted
8 a lot of hearing time.

9 Chronology of events in this case. Three
10 phases. Phase 1 is prior to the hearing. I attended
11 and participated in the Company opening houses. I drew
12 lines on maps. I got my comments in to the system.
13 There were several from the small section Rio Rico that
14 I didn't know. Did the same, and they had different
15 discussions on arranging the alignment, and they were
16 only told that they could arrange the alignment on the
17 east boundary of the railroad or the existing route.
18 They were given no other options. And this is a classic
19 case of divide and concur, get the NIMBYS fighting each
20 other, and then the power company will come in and solve
21 the problem. It was a classic, get the NIMBYS fighting
22 amongst themselves. That is really a shame. I didn't
23 know this problem existed, even though I intervened,
24 until three days prior to the hearing, and I got at
25 least 20 e-mails in three days. It was three days'

1 worth of hearing. All I did was learn about a lot of
2 parts of Rio Rico I didn't know about.

3 Now we start the hearings. First three days
4 were in Rio Rico, and the public comment sessions were
5 exceptional in their quality of information presented to
6 the public. I was impressed. I didn't arrange for
7 them. They did it themselves.

8 I listened, and one of them suggested let's go
9 west of the railroad. Well, I jumped on that horse,
10 too, and I said, let's look at west of the railroad.
11 Let's see if it can be done, because that option was the
12 one that the people were very interested in.

13 On the second day of the hearing, we went on our
14 tour. It was discussed earlier by the Applicant, we saw
15 clear-cutting. Look at Page 37 in my briefing if you
16 want to see what clear-cutting looks like. That had
17 recently been done on the existing 115 kilovolt
18 alignment. We went to the Canez Substation, and then we
19 returned there back to the hearings after lunch, but
20 while I was at the Canez Substation, I also walked to
21 the railroad from the substation. I took that line,
22 walked about 100 yards and got to the railroad, and I
23 looked across it, and I said, you know, that west looks
24 not so bad. Later on that day, Ms. Webb and I went up
25 to the -- started south of Palo Prado, which is at the

1 north end, which we went back a half mile on one of
2 those roads and walked the length of the northern end of
3 that area. I'm now more convinced that west is -- just
4 looking at this environment, is best.

5 So during these hearings, let me continue, there
6 was no real access road up there, either. I called it a
7 roadless area, where the 37-kilovolt line was.

8 And so moving it from the east side of the
9 railroad to the west side of the railroad is a total of
10 200 feet. So all I'm talking about is moving poles
11 200 feet, and everything I've said, 200 feet. I'm not
12 moving them a mile or two, just from one side of the
13 railroad to the other.

14 So during the rest of the Rio Rico hearings, I
15 cross-examined the Company and, of course, Mr. Beck
16 again and again and tried to -- first, as you know, the
17 order of presentations is the Company first and then I'm
18 second. So I've got to start getting answers during
19 their presentation before I can start doing my
20 presentation, so I can't talk yet. I've got -- so I had
21 a lot of cross-examination, and I was looking at Avenida
22 Ostion to south of Canez. I was looking at a much
23 larger length of place. And I knew that flooding was
24 going to be important, but I didn't know how important
25 at that stage, at the first set of hearings.

1 During the weeks between hearings, with the
2 Campanas, we went and had a discussion with the flood
3 control district manager who just finished, as they were
4 walking out, conversations with TEP/UniSource Electric,
5 so we saw their team. They just finished, and we walked
6 in just followed. So our flood district manager was all
7 up-to-speed on the problem.

8 And he -- they had presented him a map, which he
9 eventually sent back, and his 8 July letter, Exhibit UNS
10 25, they submitted to the docket. Now, the map that was
11 given to them by TEP went from Palo Prado all the way to
12 the Sonoita Substation. His comments were directed to
13 that map, and in it, he drew two areas that were in the
14 floodway. One of them was in the south that was quickly
15 disconnected and didn't have anything to do with the
16 problem. The one in the north actually went through the
17 edge that I was talking about, but it was north of Kiwi
18 between Avenida Ostion and Kiwi, not south of Kiwi,
19 which I will talk about in just a little while.

20 So that became the issue that was discussed,
21 and, frankly, after the hearings were over, I had to
22 leave the afternoon for the deliberations, which is the
23 time you don't like to leave, but I had to leave for
24 deliberations to have eye surgery, and I spent 11 months
25 delaying the ophthalmologist, and you can't keep

1 delaying them to get your cataract problem solved. So I
2 had to leave deliberations, which meant I wasn't able to
3 participate, but I did read the transcript.

4 And the Committee voted to use the preferred
5 east of the railroad route all the way down. And I
6 agreed with their decision after I looked at it more,
7 okay. But Phase 3 started after the CEC was granted. I
8 cannot change the record. My comments are all in my
9 briefing, and any request for the review are in the
10 record. I looked at the record again, Jeez, is there
11 another way to solve this problem? I said, you know, if
12 we went from Kiwi down to Canez, not south of Canez, not
13 north of Kiwi, I avoided the bad area, the area that the
14 river vectored in, as shown in the Attachment 4 from
15 Sherri Sass earlier this morning. I avoided that area.
16 And it is 1.3 miles approximately, and I'm going to move
17 six poles 200 feet, and the poles were shown on the map
18 that we had, so I'm only moving six poles 200 feet.

19 Now the Committee itself entered an exhibit,
20 COM-10, which was a cross-section of a river and showed
21 you where floodway was and where floodplain was, and a
22 river is sort of like this, okay. We are just on the
23 tip edge of the shallow water of the floodway. In fact,
24 I will use this 10 August reference, if you don't mind,
25 the second letter from the flood director. He said two

1 to four feet of water. That is what we are talking
2 about, a river with two to four feet of water.

3 Now, if I had taken the first place, which is
4 way up north, one of the circles you drew on the map
5 were, I would need at least 15 or 20 feet of foundation
6 above the ground. But two to four feet is not a lot of
7 depth of water. In my review letter, which I think
8 you've seen, it is also repeated in my brief, I went to
9 every bullet and every comment of this 8th of July
10 letter. I believe in flood control, but the flood
11 control director has one mission in life, nothing goes
12 in the floodplain. Nothing goes in the floodplain, and
13 nothing goes in the floodplain. I mean, he will say it
14 three times, and our guy is a good guy, and that is
15 exactly what he says when you walk in his office.

16 So we had to listen to the testimony, and I will
17 show you some pictures. I will walk you through, and
18 that is my next point is I want to -- one thing is that
19 it was discussed earlier that a turning pole would be
20 required. Actually, when we move it 200 feet and there
21 are 750 feet between the poles, that is a -- the angle,
22 the ratio is .2666, and the arc sign of .266 is
23 24 degrees, and 24 degrees is less than 30. You don't
24 need to have a turning pole generally. I'm not going to
25 speak for their engineers. Unless the turn angle is

1 greater than 30 degrees, so we don't need new poles.
2 Big poles and don't need turning poles for the six poles
3 that go to the west of the river.

4 The application says when they cross the
5 railroad, I meant to say railroad a second ago, too.
6 When it crosses the railroad, this group has to be at
7 least 41 feet above the railroad. The regular lines are
8 23 feet, so there will be four taller poles required to
9 cross the railroad. To me, that is the major change in
10 the pole.

11 Now let's walk through the alignment. If you go
12 to your second handout and turn the page, these are my
13 pictures in black and white. Mr. Campana did them in
14 color. And we see -- I'm now at the first upper
15 left-hand picture. I'm north of the start of the
16 1.3 miles. To the right -- and you have the pictures in
17 color from Mr. Campana, which are obviously better than
18 mine. The line would come in from the left, cross in
19 front of that tree, and the second pole would be about
20 where that photograph was taken. You can see to the
21 left, I'm looking south -- all these are looking south.
22 To the left you see what is commonly called the poodle
23 tree. Do you see the poodle tree? It is pretty --
24 looks like a poodle, and that is its name. It is going
25 to have to be cut down if you go in the east route. You

1 are going to lose that tree. That is a cottonwood.
2 There is a stump in the foreground here. This is the
3 one that is 13 feet in diameter -- circumference, excuse
4 me. Circumference, big difference between circumference
5 and diameter. There is actually a gate, and you can
6 cross the railroad track here. And then we start
7 looking at the road. This road, if you look at it, is a
8 rancher's road. It is within -- well, 100 feet from the
9 easement from the railroad is about 20 to 30 feet to the
10 right of that road. So that road is right down the
11 easement. You can put -- you can put that pole on
12 either side of that road. One of the complaints from
13 the Company is the access road has to be built, and it
14 is going to cost a lot of money. This road is raised.
15 It actually has drainage on both sides, a couple feet
16 above the ground. So it is actually raised. It can
17 take heavy equipment, at least that is my opinion,
18 because it takes cattle trucks, and cattle trucks are
19 not light when they are fully loaded, because they come
20 here to Rio Rico to get fat, okay, because they are on
21 their last trip when they leave.

22 But on the right, you can see the lower -- the
23 smallest trees, and I'm actually going down all the way
24 a quarter mile apart for each one of these pictures, and
25 the road quality doesn't really make a change in

1 difference, okay. But you notice that there a lot
2 of growth on the left of the road, which is in the
3 boundary between the Rio Rico and the railroad easement,
4 okay. We will go to the next page, and there is a short
5 fat guy in front here, but this is the tallest
6 cottonwood tree that is on the west side.

7 COM. NEWMAN: Just a real quick question. Who
8 controls the road that we are looking at?

9 MR. MAGRUDER: That road is on land I believe
10 owned by Avatar, because Avatar has the agricultural
11 water rights for that area, and without the water
12 rights, people have a real problem getting water in Rio
13 Rico.

14 COM. NEWMAN: Is that public egress or --

15 MR. MAGRUDER: No. I think it is private. I
16 think it belongs to Avatar. It is a rancher's road. It
17 is what the rancher gives us to pick up the cows,
18 because there are dead cattle all over the place,
19 because they walk in front of the train. That is what
20 happens to cows when they go in front of the train.

21 COM. NEWMAN: I understand, but sometimes there
22 is egress on leased land. If it is Avatar leased land
23 or private land, I'm not --

24 MR. MAGRUDER: I think Avatar owns the land.
25 Avatar, I don't want to go through the long history.

1 COM. NEWMAN: He was just shaking his head.

2 MR. MAGRUDER: It has 30,000 or 50,000 platted
3 lots. It is a major --

4 COM. NEWMAN: I know about Avatar, and I'm
5 hoping they are enlightened.

6 MR. MAGRUDER: So this tree is 19 feet in
7 diameter. I won't give you my diameter. Next page is
8 actually at the end of the line. If you look down
9 there, you can barely see it, but it is a --
10 perpendicular to the last upper photo is where the line
11 comes out of the distribution at Canez, so that can tell
12 you something.

13 Now, the lower left picture actually looks from
14 the railroad track into the Canez Substation. You can
15 see perpendicular, the lines going into it are -- go
16 across the meadow land and are furnished power to west
17 Rio Rico. There is no special construction on those
18 lines, and the second handout of photographs from
19 Mr. Campana this morning were pictures of those poles.

20 Now, you can see going East north/south are the
21 present 37-foot -- 37 1/2 foot wide right-of-way
22 occupied by the distribution lines, and then the little
23 picture on the right, the lower right-hand corner, that
24 little thing sticking up shows you the vegetation
25 management that has occurred on the distribution line.

1 You can barely see it. In other words, it is a very
2 heavy growth area around those lines.

3 That is a quick tour of what we are looking at.
4 And I've got a couple more pictures in here. One of
5 them is -- one of the 30 or more poles that are in
6 riparian floodways in Tucson, and this shows you, you
7 build a foundation up. You bolt the pole line. I'm
8 sure you've seen enough poles bolted onto foundations.
9 That occurs all the time.

10 Go to the next page, and this is probably what
11 we are looking at for the poles in this two to four feet
12 we need to worry about. This is -- that might only be
13 two feet in this second page here, but I personally
14 think that when Mr. Beck testified, I believe he said
15 \$50,000 to -- \$60,000 to \$70,000, and then it became
16 \$150,000. Now it is \$1.4 million. I don't know where
17 these numbers are coming from to put these poles in.

18 Every pole on the east and west is in the
19 floodway. Every pole on the east and west is already in
20 the floodway. You are going to put them on concrete. I
21 personally -- I'm not going to be the engineer. I will
22 not give you an engineering solution, but I would put a
23 foundation above the flood water and bolt my pole on it,
24 but I can't tell you what they are going to do.

25 COM. NEWMAN: Madam chair, just a quick comment

1 on the pictures you are showing. I want to make sure we
2 know what you are looking at. These are poles that are
3 in the Rillito and Pima County served by UniSource, I
4 imagine, as well?

5 MR. MAGRUDER: They are managed by TEP. These
6 are TEP's poles.

7 COM. NEWMAN: And I just want to note that this
8 area that you are showing in the pictures is the area
9 where they have the most egregious fear of flood, down
10 in Tucson half that area was under water. So if these
11 weren't engineered viable after the 1983 flood, I don't
12 know what is, so I just want to put that out for my
13 engineering staff.

14 MR. MAGRUDER: I have a color picture, which is
15 Magruder Exhibit Number 16, which is what I have in the
16 docket. That is a pole that is up in Tucson, also.
17 That is in the Santa Cruz River. You will notice in
18 these pictures I've shown both sides of the river are
19 concrete bank channeled. We are looking at well over
20 1,000 feet in the area of concern that I've mentioned.
21 It is not a narrow channel. And I'm talking Mr. -- the
22 flood control administrator's second letter only was
23 concerned about the southern two poles of the six that
24 I'm concerned with that would have two to four feet in
25 the floodway. I don't believe this is a super

1 engineering job to solve that problem, and I don't
2 believe it is \$1.4 million, but the Company is going to
3 give you the numbers. I can't do that.

4 In my brief, I cover the important things that
5 were indicated by the procedural order for today's
6 meeting, and that is, in particular, the impact of the
7 adequacy of the electric power, economic, and reliable
8 source of power and on the environment. These poles I
9 don't believe could ever get knocked down if they are
10 designed right in two to three feet of water. Flood
11 water, I don't think that is going to be a problem.
12 They will cost a little bit more, I will admit that.
13 But the right of way will cost much less, because this
14 is nonbuildable land, and if you go back to my briefing,
15 also on Page 14, on Page 14, I discuss -- show a
16 cross-section of all the existing right of ways right
17 now to the right side of that page, which is the 115,
18 which is the alternative route that was where we have
19 the 115 know. That is 100-foot wide, and it is variable
20 with respect to the route that was chosen, the CEC
21 route, which is 100 feet to the east of the railroad.
22 It is going to be on top of a present 37 1/2 foot
23 distribution right-of-way, so they will have to buy 62
24 1/2 feet to make their 100 feet, so that will have to be
25 extended as presently in the CEC.

1 They will abandon the route to the right, the
2 115. What I propose is to take that and move it
3 200 feet to the west and abandon the 37 1/2 foot and
4 abandon the 100-foot. Some of the properties, as you
5 could see on the Campana handout earlier today, have
6 both of these rights of way in their property -- on
7 their property. So you are going to have 100 feet in
8 your front yard taken away. They've got 37 1/2 feet or
9 100 feet in the back yard. I mean, we beat up on these
10 people a lot, okay. No one is involved -- none of these
11 at least 25 property owners will have a right-of-way on
12 their property, and I think that is worth it, and I
13 really believe their estimate is not the difference
14 between installation of the west versus the cost of the
15 east, because the cost of the east is going to be --
16 have a lot of injuries due to building the road. When I
17 walked on it a couple weeks ago, it is wet, marshy marsh
18 water, mesquite-driven ponds and stuff. There is no
19 adequate road there to use for anyone, so they are going
20 to have to build a road, cut through, build a road, and
21 letting the vegetation just grow back in there gives a
22 sound barrier between the railroad and the residents.
23 Most people don't like to live on a railroad, and if you
24 can end up with a natural sound barrier between yourself
25 and the railroad, I think that is a benefit by letting

1 the vegetation grow.

2 So I'm just moving six poles 200 feet. That is
3 all I'm asking. It is just not -- I really consider it
4 a no brainer once you have walked the route. I don't
5 believe the Company have all walked the route yet and
6 seen that road, at least based on the testimony they
7 gave.

8 Again, let's talk about the three phases. The
9 first phase is before the hearings began. The residents
10 were only given two options. During the hearings, we
11 went to three options. The hearings did not consider my
12 exception. They considered a very long segment and a
13 longer segment is what the comments came in from the
14 flood director. So his comments, I refuted them. I
15 tried. I do believe in flood control, don't get me
16 wrong on that. I'm not trying to fight them. But I
17 really think we have a good chance here on solving that
18 problem.

19 Third phase is I took the data we had. I
20 condensed my thing. It was 2.5 miles to 1.3 miles, and
21 that is the six poles. That is exception one. I've
22 even given you the language, if you want it, early in my
23 briefing if you want to vote on it today and put it in
24 the CEC.

25 Second event which -- second exception, which is

1 a lot simpler, involves the finish on the poles. This
2 to me is very, very, very important. And why is it
3 important? Because one of, if not the most significant
4 objection to transmission lines by the public is, They
5 block my view. I don't like looking at them. If you
6 can match the contrast between the background and the
7 object in front of it and make them the same, you don't
8 see the object. The military calls that camouflage.
9 You make it -- you obscure it, because you make it look
10 the same. They have two colors, finishes they will use.
11 These are natural finishes. They are not paint. They
12 don't have to be touched up after they are installed.
13 There is about a \$1,500 different, and I give you the
14 numbers in my brief in the total cost difference. It is
15 not a lot of money. .36 percent if the cost of this
16 project is \$37 million. It is not a lot of money.

17 And the way the CEC is written, the Company will
18 present a pole finish plan 30 days after the CEC is
19 granted, and they are going to mail it to the people who
20 own the land where the pole is going to go. First of
21 all, they are only going to be able to look up, but that
22 is another story. All I want to say is, wait a minute.
23 Let's involve all the people that are 500 feet along the
24 center line of the alignment, because those are the
25 people most directly impacted by the pole and the

1 finished color. That is all you are going to look at is
2 the finished color of the pole. Dark black Core 10 or
3 gray galvanized steel. Those are the choices. And I --
4 the Company agreed already to go add more time. I think
5 15 days, you are going to send a letter telling somebody
6 about the pole finish plan, and they are going to go,
7 What does that mean? They are not going to understand
8 how to reply. So you really need to work with them, and
9 I think that is important to work with the people to
10 make that decision. And I also think it needs to be
11 wider and include 500 feet. This is not a major change.
12 It has no impact on the electrical characteristics. It
13 has no impact on anything but aesthetics. If we can
14 solve the aesthetics problem, I think it is beneficial
15 for everyone.

16 In particular, I have two more handouts in your
17 thing, and this came from another company that you -- I
18 last saw you hear talking about, and you can see, they
19 did a pole color test, rust versus gray.

20 COM. NEWMAN: Is that --

21 THE WITNESS: That is Silver Springs, and you
22 can see their test, and I thought that was
23 self-explanatory.

24 CHMN. MAYES: I need you to wrap up.

25 MR. MAGRUDER: I wanted to say one word about

1 archeologists. It does not exist in the CEC. The word
2 archeologist is not in the CEC, and I do believe an
3 archeologist should do a pre-survey. I know the Company
4 testified this morning that it is, but I can't find the
5 word. If they can find it, I will stop talking about
6 that.

7 The last thing I want to talk about is -- doing
8 all this from memory now -- is the citizen advisory
9 council. I've given you an exception from an ACC
10 decision in 1999 and the paragraph that directs that a
11 citizens advisory council be established for Santa Cruz
12 County, and it last met on September 2001. Types of
13 things that it can o is solve the misunderstandings
14 between the utility company and its customers. Instead
15 of having opponents, make them proponents, put them on
16 your side. I had a list of 15 items of things that they
17 could talk to. I won't read you that list, because you
18 want me to hurry up. It is not something you have to go
19 talk to FERC about. It is a local issue. Demand side
20 management. People don't know what these mean. We are
21 not getting time of use implemented, because know nobody
22 knows. So get the local people together, businessmen,
23 and help them work together, and I don't care what you
24 call it, citizens advisory council, but we are already
25 established. We've got an order to do it. The Company

1 won't meet. They had the last meeting September 2001.
2 The last meeting, that is when we decided on the
3 345-kilowatt line going through the national forest, so
4 we don't have anything else to talk about. I think
5 there are a lot of things we need to talk about.

6 It is the continuous same group of people
7 going -- learning more, improving the knowledge base is
8 much better than an open house, showing a bunch of wall
9 boards that are all staggered. I think working with the
10 community is very important and would solve both of the
11 issues that I have brought forth as my exceptions.

12 CHMN. MAYES: Mr. Magruder, real quickly, what
13 are your views on the idea of building, rebuilding the
14 line in place?

15 MR. MAGRUDER: I'm for the line.

16 CHMN. MAYES: Rebuilding the line in place near
17 the Canez Substation.

18 MR. MAGRUDER: I would like to get rid of both
19 of the -- oh, you will have two easements if you do
20 that, because they have the distribution easement on one
21 side and they have the other one on the other side. I
22 do not support that. I really support going west. And
23 if anybody has walked that short walk 1.3 miles --

24 CHMN. MAYES: Do they not have two easements in
25 place now?

1 MR. MAGRUDER: They have two easements in place
2 now.

3 CHMN. MAYES: So what would be the problem with
4 rebuilding the line in place?

5 MR. MAGRUDER: No problem. I think it is worth
6 the cost, and I don't believe the cost is \$1.4 million.
7 If it is \$150,000, is maybe a better number.

8 COM. NEWMAN: You are not listening to the
9 question.

10 CHMN. MAYES: So you are not opposed to
11 rebuilding the line in place in the existing corridor
12 where it is right now?

13 MR. MAGRUDER: I oppose that, and I oppose
14 putting it in east of the railroad corridor. I oppose
15 both of them. I'm not for either one of those.

16 CHMN. MAYES: That is fair enough. And okay, I
17 may have some additional questions, but Commissioner
18 Newman.

19 COM. NEWMAN: Just a quick question. You are
20 giving me some historical knowledge that the Commission
21 ordered that our electric and gas utility companies
22 establish a citizens advisory councils, CACs, to work
23 closely with customers on land use issues, and you had a
24 handout excerpt from this order. It last met 2001. Was
25 there a citizens advisory committee that was established

1 in the year 200 --

2 MR. MAGRUDER: 1999, Commissioner. It was
3 established in 1999. It had meetings about every six
4 weeks or so. Minutes were provided. The ACC
5 participated. They were community meetings, and I think
6 it was a good thing. However, TEP got involved when
7 they agreed to work with Citizens Utilities Company, and
8 TEP didn't want to have the meetings, so TEP stopped the
9 meetings, not our local company.

10 COM. NEWMAN: Is it a state-wide citizens
11 advisory counsel or a regional --

12 MR. MAGRUDER: It was only in the service area
13 of Citizens Utilities in Santa Cruz County, and it was a
14 local -- a local meeting. That is where you get the
15 best stuff done.

16 COM. NEWMAN: By order of the rate hearing was
17 it, or what was the procedural --

18 MR. MAGRUDER: We had reliability problems in
19 Santa Cruz County --

20 CHMN. MAYES: Folks, just a second. You can't
21 be talking over each other, so one person at a time.
22 The court reporter needs to be able to take this down.

23 MR. MAGRUDER: In 1998 to 1999, the City of
24 Nogales filed a formal complaint against the utility
25 company. It canceled its franchise. It was not good

1 relationships. A settlement agreement was written. The
2 corporation commission rejected it because it was not
3 specific enough to demand compliance by the utility
4 company. The second settlement agreement was eventually
5 submitted, and it was approved in that ACC order you are
6 looking at. And if you notice, there is two parts. The
7 first part is the ACC order, and there is Attachment A,
8 which was a settlement agreement and which you are
9 reading from is the settlement agreement, which was, in
10 fact, in the order.

11 COM. NEWMAN: So this -- I'm just trying to
12 clarify, you had some other history there in which
13 the -- I guess, when UniSource and TEP bought Citizens,
14 they stopped the Citizens Advisory --

15 MR. MAGRUDER: No. When the purchaser, when
16 part of that -- this is a complicated. Part of the
17 reliability problem and the settlement agreement with
18 the City of Nogales and the utility company required the
19 utility company to come up with a way to get a second
20 transmission line. A second settlement agreement was
21 assigned -- signed between the staff and the utility
22 company to put in a second transmission line. That
23 resulted in ACC order 62011, which is 2 November 1999,
24 so that -- all that occurred a long time ago. Did I
25 answer your question?

1 COM. NEWMAN: You did. And my last question is:
2 I guess, from your testimony and your briefs and from
3 representative from Vail's testimony, all the public
4 open hearing testimony we heard today, you think there
5 is a reason for the CAC to continue today?

6 MR. MAGRUDER: I think there should be a local
7 utility committee. I'm not sure what we want to call
8 it, that meets where the utility company can keep
9 businessmen, customers, the community, government
10 organizations up-to-speed with all of the issues that
11 the utility company is working with.

12 As you notice in that, it says, prior to
13 submitting rate cases, they should go to that committee.
14 I have no idea what is in the present UNS Electric rate
15 case, because I haven't had time to read it yet. It is
16 1,000 pages. It takes a long time, and I will be the
17 only one in Santa Cruz County that has any idea what it
18 is about when I sit and read it. I did it on the gas
19 case a couple weeks ago. It takes a long time. I
20 really think we need to have this explained. Why are
21 they doing this? How are they going to improve? What
22 are -- what is the outage MAG, which is required by the
23 new franchise agreement with the City of Nogales.
24 Outages in the last year, where are they in the map? I
25 would like to see that. I think that is a good citizen

1 type of thing. The companies should work with the
2 community instead of, oh, we have another Line Siting
3 Committee. We have to go up to Saharita and look at all
4 these boards, and nobody will talk to us. And I don't
5 think going and looking at a bunch of boards without a
6 presentation is a very good way of public comment, and
7 would they have them in Nogales in this particular case,
8 I think eight or ten people showed up. That is all.
9 That is not a lot.

10 COM. NEWMAN: Thanks very much.

11 CHMN. MAYES: We are going to need to take a
12 ten-minute break for the court reporter, and then we
13 will come back and finish up.

14 (Recess from 3:08 p.m. until 3:23 p.m.)

15 CHMN. MAYES: Let's go ahead and go back on the
16 record. Come back to record if we could. We will go
17 with Elizabeth Webb next.

18 MS. WEBB: Chairman Mayes and Commissioners,
19 thank you for holding this special open hearing in
20 Tucson. I gave you a clean copy of my brief, which
21 contained the information from my filed errata. I've
22 also given you a copy of what I'm saying now, in
23 addition, exhibits from the record in case I get
24 distracted, which is a good possibility.

25 I'm going to go ahead. This is not on there,

1 but I want to address a couple things that were brought
2 up, questions that I might be able to answer, since Mr.
3 Magruder had to go get his eyeball fixed. Let me get to
4 those.

5 All right. Mr. Magruder spoke of alternatives
6 that seem quite reasonable during his testimony, but I
7 can't afford to hire an engineer to show that point.
8 Let's see, back to the statutory stuff. I have a
9 suggestion, if that is okay, and that is to change the
10 Commission rules to allow public comment to be part of
11 the record. That was a comment made by Chairman Foreman
12 during my testimony, that I could enter my public
13 comment that was docketed prior to the end of the
14 hearing and that would be part of the record. But from
15 what I heard today, that doesn't sound like that is
16 accurate, and I also ask the Commission to come forth
17 with an opinion on public comment, and that is not
18 statutory. That is one of the Commission rules that
19 testimony given by the public is not to be considered as
20 testimony; it is to be considered public comment, which
21 has a different -- there are some statutory things with
22 it that Chairman Foreman and Legal probably have a
23 better grasp to say the right words.

24 Asking the Company to delay, I showed him my
25 brief, and I showed evidence from the record that the

1 Company was aware that residents in the Segment 2
2 mesquite bosque had not come to agreement as to which
3 side the transmission lines should be sited on, and my
4 opinion on this, and this is just my opinion, is
5 something that is similar that happened with the city of
6 Tucson in an applicant in zoning. If an applicant goes
7 in front of the zoning commissioner and they have not
8 come to terms with the community, then these, what I
9 observed, have been asked to come back when it happens.
10 This is a choice. This amount of time that was taken up
11 in the hearing was a choice. They knew that and it had
12 shown in the record, that they had not come to a
13 consensus in that mesquite bosque for which side that
14 alignment should be on.

15 Also, the application viewing of the public
16 online, the application is 400 megabytes. I can't
17 download it. A suggestion would be to ask the Applicant
18 to put it in books in a .pdf file so the public can view
19 it, because there is quite a bit of information that is
20 not available to the general public during open houses.

21 Also, speaking to staff intervention, I did
22 write in my brief that at a minimum, the ACC staff
23 should intervene in cases where there is any associated
24 controversy.

25 Also, I just want, if I may, to approach the map

1 and show you a couple areas where the public comment did
2 come from this morning and in the record.

3 CHMN. MAYES: Sure.

4 MS. WEBB: Will you guys be able to hear me? I
5 think she can hear, because I'm right next.

6 CHMN. MAYES: The problem is, we have people on
7 the line, Elizabeth. If there is a mic behind you, if
8 we could get that is that to you.

9 MS. WEBB: I would like to show that section of
10 the line that was referred to originally was Section 1A.
11 There were letters written from Rita Ranch, which is in
12 the private land to the northeast within approximately
13 three or four miles of the project. There were public
14 comment letters that are docketed that came from Rincon
15 Valley, which is much further northeast. There were
16 letters that came from New Tucson, which is located near
17 State Route 83 and I-10, as well as letters from the
18 east of State Route 83, and then there were also letters
19 from Corona de Tucson, and unfortunately, this map does
20 not show the streets, but their boundaries for the
21 Corona de Tucson Fire Department and for the Santa Rita
22 Foothills Community Association, which is not a
23 homeowners association, it is a community association,
24 is less than a mile from the alternatives that were
25 listed.

1 Also, what I would like to point out on this map
2 is that the gray is the private land, and the blue and
3 the yellow is the -- the blue is state land, and the
4 yellow is BLM. As you can see, the majority of the land
5 in the project study area is owned by other people.
6 And, actually, this gray area says private, but I
7 believe this is owned -- that state land up there is
8 owned by the feds, because that is the prison.

9 It should go much faster now.

10 Also I would like to thank all the people who
11 came out this morning to make public comment, especially
12 my poor husband who has such a hard time. Okay. I have
13 two more little Post-It Notes. I have a lot of, I would
14 say, more objective information or observations from the
15 segment known as Segment 2 of the mesquite bosque. I
16 was asked by the chairman to go down to that area.

17 CHMN. MAYES: Hang on one second. Go ahead.

18 MS. WEBB: At chairman's suggestion, which is in
19 the record, I visited the Flood Control District. I
20 visited with John Hayes. I would really prefer to get
21 through mine and answer my questions about that. The
22 one thing I do want to say is that when the gentleman
23 from Avatar came up here to speak, he mentioned that
24 originally he thought it was for the entire western
25 alignment in that project. I testified to and showed

1 evidence in one of my exhibits that the line -- the map
2 given to John Hayes at the Flood Control District also
3 showed the entire alignment on the west. There is much
4 testimony in the transcript that shows that even if it
5 is not the 1.3 miles, it was much less. I don't think
6 he was given accurate information -- not accurate, but
7 full information about what was going on in the project
8 when they spoke with him.

9 Okey-dokey. My name is Elizabeth
10 Buchroeder-Webb. I am a ratepayer, taxpayer, community
11 activist. I mentioned all three of these things because
12 I'm paying for this project three times under those
13 pretexts.

14 I am here today to ask for six very reasonable
15 changes to the CEC as it is currently written. The
16 first is the inclusion of the citizens advisory,
17 committee council. Either one. I'm not married to
18 those items. As it is in the best interest of the
19 public. It will help provide for adequate, reliable
20 power with the desire to minimize the impact on the
21 environment and ecology with much less cost.

22 The second is to assure that those most visibly
23 impacted are notified and are able to respond to the
24 pole finish plan, as well as those who have made public
25 comment on pole finish.

1 I want to make one comment on the pole finish
2 plan. This is not new. Marshall has been doing this
3 pole thing with the Company for five years. I have been
4 doing it for almost two years. It was something that we
5 talked about prior to this. I think this time spent in
6 this hearing was a waste of the ratepayers', or whoever
7 is the one that ends up paying in the end. And that is
8 just my opinion, but this costs a lot of money, I mean,
9 to us, and I'm sure if it costs me a lot of money, I
10 can't imagine how much it costs to rent a hotel and to
11 do all those other things and to have the extra days of
12 hearings.

13 The third is to assure that the signs notifying
14 the public about the proposed construction of the
15 substation are of the standardized size or project,
16 transmission line.

17 The fourth is to add the word archeologist to
18 the CEC.

19 The fifth is to add three organizations to the
20 the CEC who will receive a copy of the certificate.
21 Before I move on to the legality of each of the above, I
22 would like to touch base briefly on the comments made by
23 the brief submitted by the Applicant on September 8th,
24 2009. As you know, neither the Siting Committee or ACC
25 regulations relating to siting proceedings specifically

1 describe the details of the public process that a CEC
2 applicant should undertake. Rather, those decisions are
3 left up to the individual applicant, and the sufficiency
4 of its outreach efforts is tested during the course of
5 the Siting Committee and ACC proceeding on the
6 application in question. I heard those words from a
7 very wise man who has been in front of you a lot.

8 Member Wong made a closing statement at the
9 hearing, transcript 1072, Lines 1 through 17. I do want
10 to state and follow up from what Ms. Webb said is that
11 she had expressed some concern about the scope of
12 outreach. I would ask the Applicant in the future to
13 err on the side of having a broader outreach as opposed
14 to a narrow other outreach in terms of public
15 participation before coming to this committee. Was the
16 outreach better in line site case 144? Absolutely, I
17 believe it was. I looked on complete envy of what
18 happened down south. And line site Case 137 there were
19 no alternatives. There were no open houses at all. And
20 in this case, there were several open houses held in
21 Nogales, Rio Rico, Green Valley, Tucson, several private
22 meetings within GOs, nongovernmental organizations.
23 Now, were there any open houses held in Vail,
24 Corona, Corona de Tucson, and Rita Ranch in Segment 1A?
25 No. Was any contact made to any non-governmental

1 organizations in the direct vicinity of the project in
2 Segment 1A in the northern end of the project? No.
3 According to Mr. Miller of Transcon, the project
4 information was not listed on the Tucson Electric Power
5 website. Mr. Miller also testified that he did not
6 believe there were any NGOs in the direct or in the
7 vicinity of the project on the northern end. This is
8 not true, shown by Exhibit Number 17D I attached to my
9 docketed brief you have in front of you. Was there
10 information in the Vail Sun Newspaper advertisements
11 indicating there would be new construction on this
12 project? No. Was there information indicating that
13 there would be TEP costs associated with the project in
14 the newspaper advertisement? No. Was there targeted
15 outreach to TEP and Trico customers, the ones who live
16 in the northern segment of the project in Pima County in
17 Segment 1A, outside of the project study area? No.

18 There were two open houses held in Tucson, and
19 according to testimony by the Applicant, they were eight
20 miles away from the project. That is approximately
21 eight miles outside of the Vail school district
22 boundaries and even further if you add the distance from
23 the Vail Substation. All of this information is part of
24 the record.

25 Speaking of the Vail school district boundaries,

1 I was glad to see the Applicant acknowledge that I cite
2 the Vail school district boundaries as one way to define
3 community. I was a little concern when the Applicant
4 stated the project is largely outside of the 425 square
5 miles boundaries. Now, technically from a geographic
6 standpoint, as you can see, this is a 50-mile long
7 project. However, it is the only section that will have
8 new construction. It is the only section where TEP
9 customers could potentially pay for in a rate case
10 82 percent of the 345 kVa transformer. The calculations
11 for TEP and UNS Electric costs come out to approximately
12 \$6.9 million for TEP customers. This is in my brief.

13 Legal counsel said Transcript Number 866, Line
14 13, so 90 percent of this was a rebuild of the line in
15 place with a segment of line, short segment creating a
16 new interconnection at Vail's TEP substation. It is my
17 understanding that the area of contention, that mesquite
18 bosque, is less than two miles. Does this mean that
19 they don't have a right to care? Twelve miles for the
20 Vail school district boundaries with the only new
21 construction, and there was no open house held in Vail,
22 Corona de Tucson or Rita Ranch.

23 The project study area, this is something I find
24 very interesting. As I testified during the hearing, so
25 it is part of the record, I am a member of the Rosemont

1 Electric Project stakeholder group. I have attempted on
2 several occasions to have a study area reexpanded in
3 that project to include my neighborhood, which would be
4 directly impacted. I poked myself in the eye with a
5 stick two weeks ago. It is fuzzy. I was told by Mr.
6 Beck and the planning group my comments could still be
7 given consideration even if I'm out the project study
8 area.

9 The reason why this is important, we've had
10 three cases now with that one in the last two years in
11 our area. It shows that what is happening is even with
12 improved outreach, it is happening again.

13 Considering the tone contained in the brief
14 regarding the project study area, I do not have full
15 confidence that my comments will be given the same
16 weight. I would also like to mention, as I did during
17 the hearings, that the neighborhoods to the north of the
18 project, the Voyager RV and Trails West communities in
19 the view -- direct view shed of the proposed new
20 construction were excluded from the newsletter mailings.
21 They are just over a mile from the project study area,
22 and please see my Exhibit Number 17B attached to this
23 packet. The brief by the Applicant acknowledges that
24 residents outside of the project study area were sent
25 newsletters to all P.O. Boxes in Amado and Tummacacori.

1 I have never spoken of the legality of the mailings that
2 were sent. In fact, Chairman Foreman asked me, do I --
3 I don't have the exact words in the transcript, but
4 essentially, it was, do I -- am I saying that they did
5 not fulfill all of the requirements? And what I said
6 essentially was that, yes, they fulfilled all of the
7 requirements. This isn't about legal requirements. It
8 is about equality.

9 Criticisms and attacks, two things of which I
10 have been accused of in the brief. I know that my
11 testimony has been backed up by evidence from the record
12 and the hearings. My understanding is if it is
13 evidence, it is not an attack, and it is not criticism.

14 It doesn't -- the perception of the events, and
15 that is okay. As I stated during the hearing, and it is
16 in the record, I am trying to work with the Company on
17 consensus building. The deputy forest director from the
18 Coronado National Forest, on the number one most
19 controversial issue in southern Arizona even wrote in a
20 positive tone of my involvement with public outreach.
21 Please see the letter attached to C to my brief.

22 I have tried to work with TEP/UNS Electric, as
23 well. The problem is, as a member of the public, I
24 cannot make comment using a forum, the telephone, or an
25 electronic communications if I do not have complete

1 upfront information from which to make those comments.
2 I keep trying to communicate correctly, but it does not
3 always seem to happen. I certainly do not want a
4 citizen oversight council. You can see Page 11 of my
5 brief. Pages 12 through 15.

6 Also, I wonder if I'm the only one who has
7 trouble communicating with the utilities. I read in the
8 procedural order, UNS Electric shall provide public
9 notice of a September 15th open meeting, public comments
10 session, oral arguments in a manner most likely to reach
11 the largest number of the affected public, including
12 publishing notice in a newspaper in a general
13 circulation in the area and post -- and posing notice in
14 appropriate locations. I didn't see the advertisement
15 for the hearing, but I don't read the newspapers. We
16 don't have TV. But -- and when I do read the newspaper,
17 it is online, and it probably is, since it was in the
18 legal notice section, probably there, but I wouldn't
19 know to look for it. But Mr. Magruder did say he saw it
20 in the paper. I saw it when it was docketed. I did not
21 see any posted notices or flyers. Sandy Whitehouse of
22 Corona de Tucson said she didn't see anything. The
23 procedural notice says including. It does not say
24 limited to. One way that the public could have been
25 notified would have been to send letters or e-mails to

1 those who have made public comment during the outreach
2 process and the hearings. Also, the advertisement still
3 does not mention TEP involvement. I have so many items
4 on public outreach that have been effective for our
5 public meetings but, again, I'm working on my
6 communication skills so utilities hear me.

7 Some things in the brief are just not true. The
8 brief states regarding Ms. Webb's allegations that the
9 Company failed to notify the Bureau of Land Management,
10 BLM. BLM was informed of the project in July of 2008.
11 I clearly stated that the Applicant failed to send an
12 agency outreach letter to BLM, and it is shown by
13 submission in the application and during testimony. An
14 agency outreach letter gives agencies an official record
15 of the project, including maps. I also testified that
16 the Applicant phoned BLM on July 8th, 2008, and spoke
17 with Angela, contacted in Phoenix Angela Mogel, not sure
18 how to pronounce that. And transcript 663 and
19 transcript 664 Page 1 through 8. Since I do not want to
20 spend a huge amount of time on the BLM issue which has
21 been filled with incomplete information on the first
22 data response I received from the Applicant. I showed
23 this with my Exhibit EW 18. You can also read more in
24 my brief on Pages 19, 21, and 22.

25 Here are few things to keep in mind, and I have

1 supplemented these with general information from
2 correspondence with the BLM attached in this packet.
3 Understanding they are not part of the record, but the
4 applicant did say in their brief they are continuing
5 talks with the BLM.

6 The applicant mentions it continues to meet with
7 BLM representatives to determine what level of
8 environmental review is needed. The Applicant has to
9 file a right-of-way application and follow the same
10 process any other right-of-way user on BLM land has to.
11 As of yet, the Applicant has not filed for a
12 right-of-way, and it hasn't during the hearing. That is
13 in the transcript. Additionally, there are Federal
14 requirements different from the ACC's process that are
15 not in the existing CEC application.

16 Another thing, as I showed in Exhibit Number 18,
17 the project -- if the project can be stopped by
18 Federal -- by the Federal Agency, the entire project is
19 considered during the environmental process. This is
20 directly opposed to the data response from Mr. Beck of
21 UNS Electric and Mr. Warner dated May 21st, 2009, where
22 they state, the remainder of the proposed project would
23 not be subject to BLM review and approval. Mr. Warner
24 testified that he has worked on Federal projects.
25 Surely, he should be aware of the council on

1 environmental quality rules.

2 Mr. Beck testified on the north end, you will
3 see that the BLM piece, the reason you really can't see
4 the BLM piece, it is hidden by the triangle, but it is
5 underneath the triangle. Transcript 749, 10 through 13,
6 this is something that is really important to me on
7 public outreach. As a member of the public, me
8 personally, a member of the public, at an open house, I
9 certainly cannot be expected to make comment on
10 something I don't know exists.

11 Mr. Beck also testified that early in the
12 process when we started the project, we had not
13 identified any BLM as part of the project. This is
14 simply not true. The first round of agency letters sent
15 January 2008 shows the preferred alignment, which would
16 bisect BLM land with the new construction. Now, this is
17 completely different from the debate about who has
18 jurisdiction over the existing facilities. This is
19 talking about new construction.

20 The BLM piece is there. It is just under the
21 triangle. In the application, it clearly shows there is
22 BLM involvement, particularly if the preferred alignment
23 was chosen. The preferred alignment has been an
24 alternative since the first public newsletter was sent
25 out for the first two open houses. The budget accounts

1 for BLM right-of-way costs are in Mr. Magruder data
2 requests and Exhibit MM15, which is part of the record.
3 Federal is approximately .05 of the right-of-way cost,
4 respondent Ed Beck. This has reminded me of an
5 uncomfortable situation that occurred during an open
6 hearing in line siting case 137. We stood in front of
7 you in Phoenix, and Mr. Chadwick, who was an attorney
8 the other intervener misspoke. Chairman Gleason said,
9 you know that the logic is when somebody is found in an
10 untruth for one time, why that whole spiel is subject to
11 question. It has made me absolutely petrified of making
12 a mistake, because I make so many mistakes. Like look
13 at my briefs. They are a disaster, all marked up. When
14 I make a mistake, I acknowledge it for what it is. I
15 want to thank Mr. Derstine, he did say something earlier
16 that he made a mistake about something, and
17 realistically, I don't hear that very often.

18 Now I will move on to my exceptions.

19 Exception one, a citizens advisory council. The
20 Applicant states in the brief that I'm requesting a
21 citizens oversight council. Again, this is simply not
22 true. I made it very clear during my testimony, and it
23 is on the record, that I struggled for a legal reason
24 for the citizens advisory council for the Committee, and
25 the citizens oversight council was and an alternative.

1 It is not part of my request for review. There are many
2 legal avenues for the CAC. Chairman Foreman wanted
3 counsel's opinion on this. It is in Transcript 870,
4 Pages 7 through 11. Page -- and then same transcript
5 number of 870, Pages 22 through 25, and I was of the
6 opinion, as it was today, it is not the appropriate
7 place. In some ways, legal counsel for the Applicant
8 makes it easier for me today, because it acknowledges a
9 citizens advisory council would be legal -- or would
10 have legal standing.

11 Legal counsel claims that the CAC would be --
12 I'm so bad with this word duplicative. This is
13 certainly not true, as the charge of the Line Siting
14 Committee is to site transmission lines on a
15 case-by-case basis, determining need versus the
16 environment in the best public interest. Although the
17 Line Siting Committee shall consider plans by private
18 entities in the vicinity of the project, the statutes
19 and policies do not bestow a transmission line planning
20 role to the Committee.

21 The FERC Order 890 concerns bulk and wholesale
22 transmission planning and encompasses many states. It
23 is not appropriate for a neighborhood and regional
24 planning in those neighborhoods. The Applicant states
25 that I've been involved in planning process stemming

1 from FERC. I really don't -- maybe I did and I don't
2 know, so I don't want to say I said something that
3 wasn't true. But the only involvement that I know of
4 with the FERC Order 890 is to ask to be included in
5 planning sessions. My request was not fulfilled in the
6 first two planning sessions. One in the summer of 2008
7 and one in December 2008.

8 When I asked again to be added to the mailing
9 list after the first session, I was told, FERC requires
10 transmission providers, such as TEP, to hold two
11 meetings covering west wide regional transmission
12 planning, and I tried to point out that all were welcome
13 at the stakeholder meetings, that the session was
14 designed to focus on regional transmission planning.

15 As to the third session for the FERC Order 890,
16 it was held during the first three days of this case
17 while we were down in Rio Rico. I couldn't have
18 attended both.

19 Mr. Beck from UNS Electric did not even know
20 about the session, and he used the FERC Order 890 as a
21 rationale not to have the CAC when we had a prehearing
22 meeting in Phoenix. I am the one who told Mr. Beck
23 about the FERC 890 session being held.

24 Anyhow, there are many citations in the record
25 that show the need for a citizens advisory council in

1 relationship to this project. It is not a tack-on.
2 Sorry, I didn't mean to be rude. I apologize to the
3 Commissioners.

4 The shared cost of the transformer. Number one,
5 the shared cost of the transformer for future capacity
6 as testified in the transcript by Mr. Beck to the TEP
7 system, 82 percent. Shared substations, as shown by my
8 Exhibit EW 14B in my brief. The Sonoita Substation is
9 Santa Cruz County. I believe it is because it is
10 Sonoita Creek. It is not near Sonoita, Arizona, except
11 they are both in Santa Cruz, but separated. Anyhow, the
12 vast majority of planned project in the vicinity of the
13 proposed project is something to be considered under
14 those statutes for the Line Siting Committee. Please
15 see only some of the exhibits to this point attached in
16 this packet. I believe at this point we are up to 20
17 proposed, 17 directly related to the Vail Substation in
18 25 years.

19 Lack of appropriate equal public outreach to all
20 impacted communities as shown by such in the
21 application, testimony, and letters from the public
22 representing hundreds of families. That is hundreds of
23 families. I'm not just the Lone Ranger, speaking of
24 riding. Marshall brought it up. I'm not just the Lone
25 Ranger riding in on Silver. Total environment as listed

1 under the statutes for the Line Siting Committee. The
2 impacts of cumulative effects associated with this
3 project is part of the total environment.

4 The statutory allowance for the Commissioners to
5 decide what is just, reasonable, adequate, and shall
6 enforce its determination by order or regulation. The
7 applicants says quite clearly in the brief it is the job
8 of the Committee and the Commission to direct and police
9 activities of UNS Electric and other utilities in
10 planning and construction of transmission line and power
11 plants. As the statutes show, the role of the Committee
12 is not transmission planning. I agree with the
13 Applicant when it says the Commission directs and
14 polices the activities of the utilities, and I'm asking
15 you now for your help, because, yes, anybody can file a
16 complaint, but it is a lot of paperwork, and it is a lot
17 of money, and it is reactive, not proactive.

18 My request cannot be considered redundant or
19 duplicative because, quite simply, it currently does not
20 exist. It is not in the best interest of the public,
21 who is typically the customer, and the environment to
22 continue blind-siding communities when individual cases
23 go through the Committee and the Commission. Costs
24 should be borne by the Applicant and TEP as part of
25 outreach. Millions -- Page 12, 7 through 11 in my brief

1 you can see how many millions over \$5 million budgeted
2 for this, \$3.1 million have been spent on environmental
3 work already on the project. This was simply a rebuild
4 in all but one section, and that is the section in my
5 community, Section 1A, and that is the section that did
6 not have any public outreach in the Vail, Corona de
7 Tucson, and Rita Ranch area.

8 The folks here today that I'm speaking for,
9 Santa Cruz and Corona de Tucson, are the same folks that
10 were at the open houses and community meetings in more
11 than one location. Something is not working. The
12 language for this addition is in the copy of my brief I
13 gave you on Page 26 of 30. I am not opposed to
14 different language you may find more appropriate.

15 So as you can see from my exception one, I have
16 give you the legal reasons I have shown the best
17 interest of the public versus the environment, and I
18 think this is a very appropriate condition for this
19 project, given the 82 percent for future capacity in the
20 TEP system and the vast number of proposed projects by a
21 private entity near the project.

22 Exception two, I am in agreement with all but
23 one thing there. Mr. Magruder's exception two,
24 regarding the pole finish color. The Company didn't
25 sound in much opposition. I would like to see language

1 to include those who have made public comment in our
2 area, and I may have felt some of the same confusion
3 that I think I heard Commissioner Newman saying about
4 who are they leasing land from and this and that. Santa
5 Cruz County with this project, I noticed that a lot of
6 it in that area was private. In my area, a lot of it is
7 state land. That is one landowner who is commenting,
8 and I know anyone can make a comment, but how would they
9 receive it? There is a lot of other issues associated
10 with that. In Line Site Case 137, Commissioner Pierce
11 made a very accurate statement, that the magnitude of
12 the pole and the significance of the aesthetics of the
13 pole will be there a long, long time, and people
14 remember.

15 And that is in my brief at Page 27, Line 14
16 through 16.

17 Exception three, it is reasonable to have a
18 proposed construction sign for the project that people
19 can see. The Applicant had this condition in one of
20 their draft CECs, and I'm not exactly sure what happened
21 to it. Please see the language in the brief I just gave
22 you on Page 28. I also would like to say what Member
23 Wong spoke of issues related to posting notice to the
24 public. It is Transcript 1072, Lines 19 through 25.

25 And also, I think there was -- this is a comment

1 by Member Wong during the Committee at the end --
2 hearings at the end. And also I think there was an
3 issue raised by Mrs. Webb about the posting of notice to
4 the public and perhaps, and I notice that as well during
5 the tours, maybe in certain areas that we have larger
6 signs, in especially urban areas where there is so much
7 clutter competing for individuals' attention, that in
8 those high urban areas where there is much signage that
9 we have a little larger sign out there. And the analogy
10 would be that some of the cities and towns, when they
11 have zoning notices they have actually four-by-eight
12 signs on the road that draws attention and have the
13 appropriate font sizes for people driving through. So
14 keep that in mind and hope others do the same going
15 forward.

16 The sign out for Line Site 137 is posted on the
17 interstate. Now, I am not going to stop my car and go
18 read a sign on Interstate 10 where the traffic is
19 typically going 75 to 85 miles an hour. There is no way
20 to see it. I only knew it was there in Line Site Case
21 137 where it is posted as a requirement for the
22 Commission. The other one is down a dead end road where
23 people don't go because it is a dead end road, and it is
24 posted on a barbed wire fence. My suggestion is to make
25 more than one sign with directional arrows in places

1 where the traffic goes faster and it is harder to see.
2 These signs also look like State land signs.

3 I'm almost done. Exception 4, Pima County
4 expressed concerns about the excellent potential to
5 impact known and as yet unknown cultural and historical
6 resources in the Application south of the Pima County
7 line. The Pascua Yaqui tribe wrote, I would like to
8 comment that a concern would lie with any inadvertent
9 discoveries in the region/vicinity of the mission sites.
10 A burial agreement with the provisions to address the
11 cultural, historical and ethnographic concerns and
12 treatments of and remains discovered affiliated with the
13 Pascua Yaqui Tribe should be considered for this
14 project. The reference cited by the brief -- in the
15 brief by the Applicant says that the archeologist would
16 be on call as needed. In response to Mr. Magruder's
17 questions about an independent archeologist, Mr. Beck
18 testified, I can't commit at this point, as we have
19 never had one. Mr. Beck testified in response to Mr.
20 Magruder's question about a pre-survey and during early
21 construction, as required, yes. I am asking you, the
22 Commission, to require that an independent archeologist
23 do a pre-survey and be on call. The application states,
24 However, near the historic communities of Tubac,
25 Calabasas, Nogales, and the floodplain of the Santa Cruz

1 River, the densities are moderate to high. And I'm
2 almost done. The tree eating machine that is used to do
3 the clear-cut, I can't even imagine how many
4 archeological pieces were destroyed during that process.
5 It doesn't go along like a weed whacker. It is a tree
6 eating machine that also digs into the ground. That is
7 near the Santa Cruz River where the application states
8 the densities are moderate to high.

9 It makes economic and environmental sense to
10 have independent archeologists make a pre-survey,
11 because if remains are found, the Pascua Yaqui tribe,
12 the homes have not been cited yet, so they can't
13 determine exactly where this is going to occur.

14 Exception 5. It is interesting that the
15 Applicant mentioned in its brief. The Applicant is
16 correct, I could not only think of one nongovernmental
17 organization in the Vail area. I could, however, think
18 of several, as I testified, and it is on the record. I
19 have given the Applicant many organization names in the
20 past, and I would like to speak to that. It is on the
21 record in February of 2008, public comment Line Site
22 Case 137, where JJ Lamb, co-director of Vail
23 Preservation Society, not me, JJ Lamb, asked to be added
24 as a stakeholder.

25 Anyhow, I was not prepared at the time of Mr. --

1 Member Mundell's question. It was not something that
2 ever entered my mind. I had food poisoning. I wasn't
3 thinking, and I wasn't prepared for the question. I
4 have since thought of three more. Please see the
5 attached language in the brief I just gave you, Page 29.

6 Exception 6. I have concerns about the fiber
7 optic line from Mr. Magruder's date requests. Is there
8 an existing fiber optic capability in the previously
9 upgraded line? I mean, I really don't know. If there
10 is one and it is already there, then there wouldn't be
11 any sort of disturbance, particularly there, but I don't
12 know. I honestly do not know.

13 Along with that, I have concerns about the
14 multiple access and construction roads adjacent to the
15 previously rebuilt line, as well as flooding issues
16 along Wilmot Road. This is part of the testimony. I
17 cannot understand why the Applicant is so opposed to
18 this condition if they will not need to use it. Please
19 see my proposed language in the brief I just gave you,
20 Pages 29 through 30.

21 Another couple of things that I heard really
22 quickly. Mr. Magruder testified that it is all in the
23 floodway. I think he meant to say floodplain. Also, it
24 is in the transcript and on the record that Mr. Magruder
25 asked to go west of the railroad when we were on the

1 field trip, and we just didn't do that. Also, there was
2 no field trip to the north turn portion of the line. I
3 don't want to get into that, because I think Foreman
4 Foreman did a really good job with this. I'm done. Any
5 questions?

6 CHMN. MAYES: Probably a couple. Thank you,
7 Ms. Webb. My first question for you is, given the
8 disturbance that will occur likely with putting the line
9 anywhere other than where it is right now, if you go
10 east, if you go west, you just mentioned the tree eating
11 machine, and I've seen some of those machines. I've
12 seen footage of what happens when they apply those
13 things to saguaros, and it is ugly and something that
14 has concerned me. It is a little bit like Pac Man. It
15 concerned me so much that I asked APS to stop it, and
16 they did to a large degree up in central Arizona. Given
17 the destruction associated with building these lines,
18 wouldn't the best option be to rebuild it in its
19 existing location?

20 MS. WEBB: I think it is the public interest and
21 need versus the environment. These -- this community
22 already has lines on either side. You have been given a
23 reasonable alternative, and I think that is the
24 alternative, given the fact -- now, I deal with a lot of
25 flood issues, and typically, I would not say this if I

1 have not been on-site myself. It is all in the
2 floodplain, and so, therefore, this area is six poles in
3 this very unique mesquite bosque in southern Arizona. I
4 absolutely do not recommend the existing alignment. The
5 preferred alignment that was granted by the CEC --

6 CHMN. MAYES: That wasn't my question. My
7 question was, wouldn't it be in the public interest,
8 given the environmental impacts of moving it to a
9 different location, to simply rebuild it where it
10 currently is? That was my understanding of one of the
11 options that was put forward, that the Company chose not
12 to -- not to go down that path, chose not to -- did not
13 choose that route, because there was some early
14 opposition to just rebuilding the existing line. Some
15 people wanted it moved.

16 MS. WEBB: I think I understand the question
17 now. One of the rationales for building this line was
18 based on the encroachments that happened up against
19 their line. It is my understanding from the hearing and
20 the photos that I've seen that there are encroachments
21 in the existing alignment.

22 CHMN. MAYES: In this area we are talking about?

23 MS. WEBB: Absolutely. There is gate that the
24 utility built for them to get into their pole. So it
25 wouldn't be in the best interest of the environment. I

1 did drive down there. They've clear-cut with the tree
2 eating machine quite a bit of the existing alignment.
3 There is quite a bit where the neighbors requested a
4 five-year trim, and I could see much of it has grown in
5 with the lay down sites and all the other things, and
6 given the fact there is an access road on the west side
7 and the fact it is -- I think that there could be a wash
8 when you determine public need versus the environment.

9 CHMN. MAYES: Okay. Let me ask you this. You
10 indicated in your opening statement that you were
11 worried based on what the Company had put in its brief
12 that your participation in the case, your intervention
13 in the case and your public comments would not be given
14 proper weight. By whom? Because it is my experience
15 that you have significantly impacted the cases here at
16 the Commission, and you've -- your voice has been heard
17 quite significantly by both this Commission and the Line
18 Siting Committee, so is it the Company that you are
19 worried is not listening to you? Is it the
20 Commissioners you don't think are listening to you?
21 Because if that is your concern, I can guarantee you, we
22 are, and it sounds like you had a very successful
23 intervention in the case, so can you elaborate on what
24 you are worried about?

25 MS. WEBB: Look at them. They are smart. They

1 look great. If they write something with a tone like
2 that in a brief -- I'm still learning this stuff and --

3 CHMN. MAYES: But you are otherwise satisfied
4 with the Commission's process? It is the Company's
5 wording in their brief?

6 MS. WEBB: In this case, I am concerned about
7 the wording in the brief. I do have some concerns, but
8 I already addressed them about things not being complete
9 before they come to the Committee.

10 CHMN. MAYES: Okay. And then, if I could ask
11 you, you believe that the outreach that was done was
12 inadequate with regard to Section 1A on the line, and
13 then -- is that accurate? Because there were no town
14 halls, and I will ask the Company about this, why that
15 happened, but there were no town halls in the one area
16 on the line that is actually new. Is that --

17 MS. WEBB: In the community, and I don't ever
18 know how to express this correctly, because our kids go
19 to the same high schools. It is different from other
20 communities, because that is the area within the Vail
21 school district boundaries, and it is a school district
22 that headed to alternative things. That was my concern
23 with the public outreach. Vail, Corona de Tucson, Rita
24 Ranch, and given the vast number of projects associated
25 with this, comparatively speaking, it is much better.

1 There were two open houses. There were a lot of
2 newsletters sent out, and there was great outreach to
3 the southern end. They could listen to people better
4 sometimes, but as far as holding private meetings in the
5 southern portion, that happened, and I think it should
6 be equal treatment.

7 CHMN. MAYES: And then, my final question is,
8 how broad do you think that equal treatment should be?
9 Because I think that is, you know, the \$64,000 question
10 on this issue. You know, is it two miles? Is it ten
11 miles? I think counsel for the utility did have an
12 interesting take on it, and from the Commission, where
13 do you stop? I mean, do I have an interest in this
14 power line because I might spend time in the area?
15 Should I be notified? I mean, at what point does it
16 become so onerous that the ratepayers shouldn't be asked
17 to bear that burden?

18 MS. WEBB: I don't think newsletters are very
19 effective, but it is something that has to be done. I
20 think what needs to be done is advertising has to be --
21 I couldn't say accurate, because that would be
22 miss-speaking. I think it needs to be upfront. That
23 means in front of, before, complete, honest. Nothing in
24 this area said a thing about TEP or TEP involvement.

25 And I just want to make one really -- one point

1 really quickly. Regardless of how good public outreach
2 is, the charge of the Line Siting Committee is not to do
3 transmission line planning.

4 CHMN. MAYES: Okay.

5 MS. WEBB: I'm done.

6 CHMN. MAYES: Are there any other questions from
7 the bench?

8 Okay. Thank you, Ms. Webb.

9 Do we have any other questions for the Company?
10 Mr. Derstine looks like he wants to make some rebuttal
11 now.

12 MR. DERSTINE: I had the cost number.

13 CHMN. MAYES: We have the cost number for
14 Commissioner Newman?

15 MR. DERSTINE: Chairman Mayes, Commissioner
16 Newman you inquired about the total cost for the
17 project. Pages 126, 127 of the hearing transcript there
18 is testimony from Mr. Beck that the Company's best
19 estimate for the project was \$33.7 million as the total
20 project cost. Again, you have variables acquiring
21 right-of-way and no real certainty of, when you are
22 working with private landowners, what you are going to
23 have to pay for land and access, but the testimony
24 during the course of the hearing was \$33.7 million.

25 COM. NEWMAN: Madam Chair, Matt Derstine, that

1 means if we do a western amendment that that would be
2 one-thirtieth of the cost of the project or even less.

3 MR. DERSTINE: I will trust your math.

4 COM. NEWMAN: Pretty simple math. Since you are
5 up there, I have one quick question. I hope it doesn't
6 upset some of my commissioner friends. On this
7 archeological point, just really a point of information
8 about the archeological point. Now I am confused. I
9 know on the county planning cases, we always were
10 concerned about Native American sites, and we were
11 always referred to Federal authorities, and the State
12 museum would sort of regulate that on the county level.
13 And just in this context, how do you see your role as
14 your company with complying with Native American
15 artifacts and archeological sort of concerns that people
16 do have?

17 MR. DERSTINE: Mr. Gellman is pointing me to the
18 section of the CEC. He indicates there are conditions
19 that deal with Native American artifacts in Arizona
20 laws. I would point out, with the archeologist issue,
21 there is this general catchall condition in this CEC and
22 all CECs that say, that the Applicant, in constructing
23 the project, shall comply with all existing applicable
24 statutes, ordinances, master plans, county comprehensive
25 plans. It goes on to say, any other governmental

1 entities having jurisdiction during construction and
2 operation of the transmission line.

3 COM. NEWMAN: My quick question is, what are you
4 doing to comply with this archeological component, and I
5 could ask you 50 questions today about other things, but
6 I'm just asking you about this one thing. I want to see
7 whether you are doing the right thing on this.

8 MR. DERSTINE: Well, part of the agency outreach
9 is determining what agencies have jurisdiction and what
10 the directives are with respect to the construction of
11 this project. Attached to the application is a letter
12 from the State Historic Preservation Office, SHPO, the
13 Arizona State Bar, it says, regarding requirement for
14 Class I/Class III cultural resources inventory, survey
15 of land associated with UNS Electric proposed Valencia
16 Project. In there, it requires that the Applicant, UNS
17 Electric, and its consultants perform not only a Class I
18 survey, but a Class III survey prior to any construction
19 activities, and further, that we have an archeologist on
20 call in the event any sites are discovered through
21 course of construct.

22 And the obligation is set forth in this letter,
23 again, complying with agency and state law requirements
24 is submit our Class I and Class III surveys to this
25 agency in advance of construction. That will be done,

1 and that is what we are ordered to do as part of the
2 CEC.

3 COM. NEWMAN: And then, my final question is
4 this. Given what was heard today in open hearing and my
5 questions to counsel about, you know, how the Commission
6 deals with issues gleaned through open hearing and the
7 preponderance of testimony, at least today from the
8 public that they would like to see a western spur, is it
9 still the Company's position as it was in the opening
10 statement?

11 MR. DERSTINE: Yes.

12 COM. NEWMAN: Okay, thank you.

13 CHMN. MAYES: Okay. Is there anything that --
14 I'm sorry, we have got to. Sorry, ma'am, we already --
15 we have done the public comment. We have had the
16 intervenors participate and speak.

17 What I would like to do, I think it is the
18 drothers of my colleagues, it feels like, to vote on
19 this item in a couple of weeks. We have an open meeting
20 on September 22nd and 23rd, and I would propose that
21 we -- that we vote on it on September 23rd and do it at
22 10:00 a.m. irregardless of what we happen to be doing at
23 that time. That would be the second day of the open
24 meeting. It would give the parties a time certain,
25 including interveners and members of the public who

1 might want to come up to the Commission. I had hoped we
2 would vote on it down here. That was sort of the point
3 of coming down here was to -- we were asked by the -- I
4 think the County Board of Supervisors to cast the vote
5 down here, but, obviously, you know, we are moving into
6 a second day, so that -- is that okay with my
7 colleagues?

8 COM. NEWMAN: Yes, I would like to respond to
9 that. Actually, one of the inquiries that I need to
10 make is to Santa Cruz County itself about, you know,
11 this letter. I don't know if I make an inquiry outside
12 an open meeting. I think the point I'm trying to make
13 is, I think the Santa Cruz County Board of Supervisors,
14 if they knew that there was a section, a riparian area
15 in question that we were just fully apprised about
16 today, for us to take another two weeks to try to
17 resolve that situation. I know all three of the
18 supervisors, and I know that they would probably be
19 happy that we would be trying to resolve that issue
20 rather than a thorn in their side. So I just wanted to
21 make that part of the record, too.

22 CHMN. MAYES: Okay. Well, I would just remind
23 my colleagues, we are bound to decide the case based on
24 what is in the record and what is in evidence, and I
25 know that is the -- that is what the the Commission does

1 and will do.

2 To Commissioner Newman's point, I want to drill
3 down one last time on this issue of the letters from the
4 Flood Control District. There was a letter that came
5 in, and I want to refer to Mr. Magruder's brief. On
6 Page 18 of his brief, he cites some comments by the
7 Applicant. I assume that is you, Mr. Derstine. I think
8 he quotes the Applicant as saying, and this is, I think,
9 in reference to the first Flood Control District letter,
10 and correct me if I'm wrong. It says, he quoted, quote,
11 you know, yesterday, Mr. Chairman, you looked at the
12 fact that evidence appeared to be being created on the
13 fly, and that in all of your years of sitting as a
14 judge, haven't had that experience, I would say that and
15 other aspects of this case are unique. Certainly my
16 experience in this case and others is that this is not
17 what we would typically see in court at trial and in a
18 jury trial, Mr. Magruder is citing the transcript at
19 Page 856, Lines 5 through 12. Did you say that?

20 MR. DERSTINE: I did.

21 CHMN. MAYES: And what did you mean?

22 MR. DERSTINE: Mr. Magruder didn't include my
23 entire quote. It was in reference to this letter that
24 came in on the last day of the hearing from the -- from
25 Mr. Hayes, the County Flood Control district manager,

1 and my comment was directed to this case as well as the
2 last case, in that, in these -- my experience has been
3 in these Siting Committee cases that we don't have any
4 control over county boards of supervisors, and when they
5 intend to weigh in, in Case 137, we had letters and
6 resolutions being created on the day of the hearing and
7 at the day of the open meeting, and we were faced with
8 those.

9 In this case, at the conclusion of our three
10 days of hearing in Rio Rico, the chairman directed the
11 parties to go back and meet with the Flood Control
12 District manager and get some further evidence on the
13 potential impact of moving this line west of the
14 railroad into -- further into the floodplain and into
15 the floodway. The parties did that, and we were all
16 waiting for some further response and input from
17 Mr. Hayes. That letter didn't come until that last day
18 of hearing. So my comment, and it is quoted there,
19 says, this is unique that we are getting evidence that
20 is coming in on the day of the hearing. I went on to
21 say, Members of the Committee, and I would say it to
22 you, Members of the Commission, as you know, this case
23 must be decided on the evidence and the testimony. And
24 the evidence that came in through that letter was the
25 significant impact and the opposition of the flood

1 district control manager to putting that line west of
2 the railroad.

3 CHMN. MAYES: Right. And the thing that is
4 concerning is that it -- not only it came in on,
5 apparently, the last day of the hearing, but also,
6 apparently, swayed the Line Siting Committee. I mean,
7 you said in your opening remarks, it was incredibly
8 impactful on the Line Siting Committee, and the
9 implication I drew from your comment is that they were
10 going to go with the western route or they were going to
11 go with something different, or am I wrong in that?
12 What were they leaning toward doing? Maybe you just
13 can't -- couldn't tell. There is no way to tell.

14 MR. DERSTINE: I don't want to speculate in
15 terms of how the Committee would have voted. I know
16 there was interest in the Committee in exploring the
17 possibility of moving the line west. What were the
18 impacts? What were the risks associated with that?
19 That was the reason for the directive from the Chairman
20 for the parties to go back and meet with Mr. Hayes,
21 which the Company did, which Mr. Magruder and the
22 Campanas did, which Ms. Webb did. We all met with him,
23 and then we were waiting to see what his conclusions and
24 what his position would be. We didn't have any control
25 over that. There wasn't any delay on the part of the

1 Company. His letter came when it came, and in, fact we,
2 were calling and contacting his office well in advance
3 of the reconvening of the hearing asking if he was going
4 to take a position and if he would please get us
5 something in writing that we could share then with --
6 pursuant to the Chairman's directive, and that -- the
7 timing of it is when it occurred.

8 CHMN. MAYES: And is there anything in the
9 record with regard to how that letter came in? I mean,
10 did it just sort of arrive? Was it solicited by
11 somebody? Were you surprised that the Flood Control
12 District weighed in? And I'm just asking you for any
13 information that is in the record on that point.

14 MR. DERSTINE: I don't think -- I think, and I
15 wasn't present for the meetings, but I think Mr. Hayes
16 has not been bashful about making clear his position to
17 the parties. I think he made clear his position to
18 Ms. Webb when she met with him. I assume he did the
19 same with Mr. Magruder, that he did not think that
20 putting the line west of the railroad was a good idea.

21 CHMN. MAYES: Before he sent that letter?

22 MR. DERSTINE: Before he sent that letter. At
23 the same time, he didn't appear. You know, he wasn't
24 subpoenaed to appear, so the way for his position to
25 come in, short of the parties relating what Mr. Hayes

1 told them in each of their independent meetings, was his
2 letter. And ultimately -- and there were inquiries by
3 the Company, and presumably inquiries by the other
4 parties, to Mr. Hayes, what was going to be his final
5 position? I don't think it was known, but I don't think
6 it was a given that the Committee was going to -- making
7 its decision to put the line west of the railroad, and
8 this turned it around. I think there was legitimate
9 interest and serious consideration of that. I think the
10 decision turned not only on Mr. Hayes' letter, but
11 further on, there was extensive testimony and
12 cross-examination from Mr. Magruder of Mr. Beck on that
13 last day of hearing. Mr. Magruder pointed out, hey,
14 doesn't TEP build and have structures in the Rillito
15 River? Haven't they withstood floods? And he had
16 photos of that. In testimony, yes, we do. We can build
17 it in the river. But pointing to that flood of 1983
18 where some structures withstood it, there were several
19 other structures that did not, that were knocked down,
20 and Tucson was out of power for a number of days. And,
21 in fact, the city was on the verge of a blackout as a
22 result of those structures being brought down in that
23 flood. And so those are the risks that Mr. Beck
24 testified to. That is why the Company doesn't think
25 this is a good idea and testified against it. And

1 Mr. Hayes, the Flood Control District manager, shares
2 the same concerns, as he expressed in his letter.

3 CHMN. MAYES: And TEP did not solicit that
4 letter from Mr. Hayes?

5 MR. DERSTINE: I think all the parties had the
6 same -- did you inquire of the position?

7 MS. WEBB: Can I speak?

8 MR. MAGRUDER: I know his position.

9 CHMN. MAYES: Whoa, whoa, whoa.

10 MR. DERSTINE: I wasn't there. According to
11 Mr. Beck, they asked him at the time of the meeting if
12 he would state his position in writing.

13 CHMN. MAYES: At the time, you had met with him
14 before you filed your case, during the pendency of the
15 case?

16 MR. DERSTINE: I'm not aware.

17 MR. BECK: It was between hearing dates.

18 MR. DERSTINE: So the only direct meeting they
19 had with Mr. Hayes was at the insistence of the
20 Chairman, who said, go back and meet with the Flood
21 Control District manager and discuss with him the option
22 of moving along the west, and that is what the parties
23 did, and this letter was a product of that?

24 CHMN. MAYES: And there was no opportunity,
25 obviously, for the parties to cross-examine Mr. Hayes,

1 because he was not called as a witness?

2 MR. DERSTINE: Correct.

3 CHMN. MAYES: Okay. All right.

4 Commissioner Newman.

5 COM. NEWMAN: I'm only having this conversation
6 because it is the only time we could have it. Under
7 law, we have to have these conversations, so I think
8 still think it is interesting that the second letter,
9 first of all, that was received after. How we treat
10 that as evidence is a matter of some import, because no
11 matter how you -- there is different ways to analyze it,
12 but I do believe it is a little bit more open letter, in
13 the sense that it points to that there is some sort of
14 cost benefit involved here, and he is not saying
15 absolutely not. But that, you know, somebody has to
16 weigh this, and that would be us, and so -- and I'm just
17 thinking right now, this is Judge Foreman. This is our
18 committee, and I inquired before about a possible remedy
19 of remanding back. If he now has another letter that
20 has nuances of differences of opinion than the letter
21 that was received on the last day of the trial. It is
22 new evidence of a change in position on this very
23 important piece, and in a sense, if we were an appellate
24 court reviewing the Line Siting Committee ruling, we
25 would say, don't you think you should take more

1 testimony on this issue? I view as the Line Siting
2 Committee as sort of the place of original jurisdiction
3 for this, and so I'm just trying to help here clarify
4 something, because I don't want to go overboard with
5 taking new evidence and making that a judgment in which
6 we are asking the Company to do a cost benefit study,
7 which might ultimately be remedied cost ultimately
8 \$1 million, but I'm just trying to work this out in
9 question of remand and new evidence. And given this
10 unique circumstance, there has been a lot of testimony
11 from the public that they would like to see it on the
12 west side. I don't know if it was thoroughly considered
13 by the Line Siting Commission because of this letter
14 that appeared without really the opportunity to
15 cross-examine because the proponent of the letter was
16 not there. It was just a letter.

17 CHMN. MAYES: I think any commissioner can, you
18 know, make their view known about wanting to remand the
19 case, and certainly, we've got now a couple weeks for
20 any sort of suggestion, and I would have to discuss it
21 with legal counsel in terms of process. I'm not
22 convinced that is necessary at this point, but
23 certainly, we can discuss that with Staff if a
24 commissioner puts that on a staff meeting agenda, or we
25 can discuss it next time.

1 Ms. Wagner, did --

2 COM. NEWMAN: I just want to say, that was half
3 of the remedy, and, of course, you know, an up and down
4 vote on the western decision would be the other way, but
5 given its -- we are in an evidentiary difficult
6 situation. I don't know which is the best remedy.

7 CHMN. MAYES: Go ahead, Ms. Wagner.

8 MS. WAGNER: I want to clarify the date by which
9 you must decide the September 28th, but I believe
10 September 23rd is next week, so you don't really have a
11 couple of weeks.

12 CHMN. MAYES: I'm sorry, you are right. My
13 mistake. It is next week.

14 MS. WAGNER: I guess I just wanted to clarify,
15 although the August letter was not in evidence before
16 the Committee, it is my understanding that there was a
17 great deal of evidence put on by Mr. Magruder in support
18 of the western route, so it is not as though the
19 evidence that you have before you does not contain
20 substantial information about that, and certainly, as
21 you weigh that record, you can weigh, frankly, your
22 concerns about the letter, such as, it was not subject
23 to cross-examination and was provided late. Those are
24 the kinds of concerns that you certainly can make when
25 reviewing that record and then making your

1 determination.

2 So I think I may have misled you earlier. There
3 is the letter from August 2009, but this record is
4 replete with information about Mr. Magruder's proposal
5 for the western route.

6 COM. NEWMAN: Thank you.

7 CHMN. MAYES: Okay. Mr. Derstine, anything?

8 MR. DERSTINE: I would only echo Ms. Wagner's
9 comments that there is evidence in the record, not only
10 extensive testimony in cross-examination of the western
11 routes and the implications of moving the route west of
12 the railroad, and I believe there is testimony and
13 comments by the Siting Committee about why they voted
14 the way they did.

15 CHMN. MAYES: I think we will wrap up. Do any
16 colleagues have anything?

17 No. Let me finish by thanking all the parties
18 for their participation, especially all the folks that
19 came up here to make public comment. We take your
20 comments very, very seriously in these cases and
21 appreciate what you have to say, and all of us took
22 copious notes, and we have the transcript, as well. It
23 will be taken back with us when we make this decision.

24 Thank you, Mr. Magruder and Ms. Webb. You have
25 proven, once again, that the Commission has very liberal

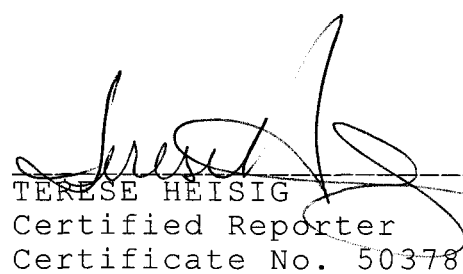
1 and progressive intervention policies, and it works, and
2 I think it works well for Arizona. So thanks for your
3 participation in the case, and we will see everybody
4 again next week on the 23rd at 10:00 a.m. We are
5 adjourned.

6 (The proceedings adjourned at 4:35 p.m.)
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5

6 I, TERESE HEISIG, Certified Reporter No. 50378
7 for the State of Arizona, do hereby certify that the
8 foregoing printed pages constitute a full, true and
9 accurate transcript of the proceedings had in the
10 foregoing matter, all done to the best of my skill and
11 ability.
12

13 WITNESS my hand this 21st day of September,
14 2009.
15
16
17

18 
19 TERESE HEISIG
20 Certified Reporter
21 Certificate No. 50378
22
23
24
25

Speaker Slips

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Name Sherry Sass
Title president
Representing (Group Affiliation) Friends of the Santa Cruz River
Street Address PO Box 4275
City Tubac State AZ Zip 85646 Telephone No. 520 979 9214
Comments: _____

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Name RATHI CAMPANA
Title VP, CO CHAIR, DIRECTOR
Representing (Group Affiliation) SELF, RESIDENTS of Rio Rico, DACA LEAD
Street Address 1520 PENDLETON CD of REACTOR
City Rio Rico State AZ Zip 85648 Telephone No. 520-313-4291
Comments: _____

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11

Please talk first - have to go back to work.
Thank You

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Date 15 Sept 09

Agenda Item No. Segment 1

Name James Webb

Title _____

Representing (Group Affiliation) Uail area

Street Address _____

City _____ State _____ Zip _____ Telephone No. 247-3839

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Name GAIL GETZwiller

Title _____

Representing (Group Affiliation) _____

Street Address PO Box 815

City Smethport State Az Zip 85637 Telephone No. 520-455-5200

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②

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Thank You!

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Name Charlotte Cook

Segment 7 ✓

Title _____

Representing (Group Affiliation) _____

Street Address _____

City Nail State AZ Zip 85641 Telephone No. 260-4480

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Name Gayle Getswiller

Title _____

Representing (Group Affiliation) _____

Street Address _____

City Sonita State AZ Zip _____ Telephone No. _____

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(3)

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Family —

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Name Sandy Whitehouse
Title _____
Representing (Group Affiliation) Santa Rita Foothills Community Association
Street Address _____
City Corona State AZ Zip 85641 Telephone No. 762-5555
Comments: CAC

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Name GARY GRIZZLE
Title WLB GROUP
Representing (Group Affiliation) AVATAR
Street Address 4444 E Broadway
City TUCSON State AZ Zip 85711 Telephone No. 801-7480
Comments: _____

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Name Kim Rego
Title webmaster - AZhighway83.com
Representing (Group Affiliation) _____

Street Address _____
City Vail State AZ Zip 85641 Telephone No. _____
Comments: CAC -

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Name J.J. Lamb
Title Director, Vail Preservation Society
Representing (Group Affiliation) my family & community

Street Address 2954 E. Cardenas
City Vail State AZ Zip 85641 Telephone No. 520-419-4428
Comments: CAC

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Name Sherrill Stinnett

Title _____

Representing (Group Affiliation) _____

Street Address 13695 E. Windswept Way

City VALE State AZ Zip 85641 Telephone No. _____

Comments: _____

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Name BOB IANNARINO

Title V.P.

Representing (Group Affiliation) SOUTH WILMOT LAND INVESTORS LLC

Street Address 2200 East River Road #115

City TULSON State AZ Zip 85718 Telephone No. 520-577-0200

Comments: HERE TO ANSWER ANY QUESTIONS CONCERNING OUR
CONDITIONAL SUPPORT LETTER SENT LAST WEEK

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Name Sherri Stinnett

Title _____

Representing (Group Affiliation) _____

Street Address _____

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Name RON CAMPANA

Title _____

Representing (Group Affiliation) SELF & NEIGHBORS

Street Address 1520 PENDLETON

City Rio Rico State AZ Zip 85648 Telephone No. 520-281-8250

Comments: _____

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